TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 669.

CITIZENS' SAVINGS BANK OF OWENSBORO, PLAINTIFF IN ERROR,

vs.

CITY OF OWENSBORO AND A. M. C. SIMMONS, TAX COLLECTOR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED JANUARY 10, 1899.

(17,254.)

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(17,254.)

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1 COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the 24th day of March, A. D. 1897, Chief Justice Joseph H. Lewis, Judges James H. Hazelrigg, Thomas H. Paynter, B. L. D. Guffy, George Du Relle, A. R. Burnam, and J. D. White sitting.

CITIZENS' SAVINGS BANK, Appellant,
vs.
CITY OF OWENSBORO & A. M. C. SIMMONS, City Tax Collector of the City of Owensboro, Appellees.
} Appeal from Daviess Circuit Court.

Be it remembered that heretofore, to wit, on the 25th day of July, A. D. 1895, the appellant, The Citizens' Savings Bank, by its counsel, filed in the office of the clerk of the Kentucky court of appeals a transcript of record in words and figures following, to wit:

STATE OF KENTUCKY,
Daviess Circuit Court.

2 Pleas before the Hon. W. T. Owen, judge of the Daviess circuit court, at the court-house, in the city of Owensboro, Ky., on the 2nd day of March, 1895.

CITIZENS' SAVINGS BANK OF OWENSBORO, Plaintiff,
against
THE CITY OF OWENSBORO and A. M. C. SIMMONS, City Tax Collector of the City of Owensboro, Defendants.
} Petition in Equity.

Be it remembered that heretofore, to wit, on the 10th day of October, 1894, the plaintiff, The Citizens' Savings Bank of Owensboro, filed in the Daviess circuit court clerk's office a petition in equity against the defendants, The City of Owensboro, Kentucky, and A. M. C. Simmons, city tax collector of the city of Owensboro; which petition is in words and figures as follows, viz:

Petition.

The plaintiff, The Citizens' Savings Bank of Owensboro, Kentucky, states that it is a corporation regularly incorporated and organized under an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to incorporate the Citizens' Savings Bank of Owensboro," approved May 12th, 1884, and that it is duly authorized thereunder to sue and be sued, make contracts, &c., and to do a general banking business in the city of Owensboro, and to have all the powers that are usual and incident to banking corporations in this State. The plaintiff states that by the act aforesaid its charter and the powers therein conferred were to continue to be in force for a period of thirty years from said May

12th, 1884. The plaintiff states that by section 7 of the acts aforesaid it was stipulated and provided that it should
3 be the duty of the cashier of the plaintiff bank on the first day of January in each year to pay into the State treasury fifty cents on each one hundred dollars of stock held and paid for in said bank, which should be in full of all tax or bonus thereon of every kind. The said section 7 in said charter is as follows: "That it shall be the duty of the cashier on the first day of January in each year to pay into the State treasury for the benefit of revenue proper fifty cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax and bonus thereon of every kind." The plaintiff states that it accepted said charter so granted to it by the State of Kentucky in said act and organized thereunder on — day of ——, 18—. The said provision in said section 7 in said act constituted and was the principal inducement to this plaintiff which caused it to so accept the said charter and to organize and begin business thereunder. The plaintiff states that the granting to it of said charter by the State of Kentucky and its said acceptance thereof constituted a valid, binding and irrevocable contract between plaintiff and the State of Kentucky, and that upon its said acceptance of said grant of said charter the right to the rate of taxation therein provided for vested in this plaintiff. Afterwards, by an act of the General Assembly of the Commonwealth of Kentucky entitled "An act —,' known as the Hewitt law, and approved on the 17th day of May, 1886, being chapter 92 in the edition of 1888 of the General Statutes of this State, it was provided as follows: "That shares of stock in State and national banks, and other institutions of loan or
4 discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations or societies, and said banks, institutions and corporations shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county and municipal." By section four of said act it is provided as follows: "That each of said banks, institutions, and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as

said tax shall be paid during the corporate existence of such bank." It was further provided in said act that said banks might take the proceedings authorized by said section four at any time before the meeting of the next General Assembly thereafter.

5 The plaintiff states that anterior to the passage of the said Hewitt law the several banks in the State of Kentucky had, under their respective charters, various and different rates of taxation and a smaller rate of taxation than that provided for in said act, and the act aforesaid was passed for the purpose of obtaining a uniform rate of taxation for all the banks within this Commonwealth, and for the purpose of giving permanence and stability to such uniform rate thus established. Moreover, it was of great advantage to the State of Kentucky, in that it largely increased the revenue derived from bank taxation in this State. Immediately after the passage of the Hewitt law plaintiff, in consideration of the agreement by the State in said act contained that said tax and rate of taxation therein provided for should be in full of all tax, whether State, county, or municipal, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular meeting thereof, gave its consent in writing to the levying of said increased tax provided for in said act, and agreed to pay same as provided therein and relinquished its right under its said charter to pay only the sum of fifty cents on each one hundred dollars of stock held and paid for in said bank in full of all tax or bonus thereon of every kind. The said written consent was delivered at once by plaintiff, under its seal, to the governor of this Commonwealth, as provided in said act, and plaintiff complied in every respect with the requirements of said law. It states that since said time it has paid into the treasury, at the time provided in said act, said seventy-five cents on each share of one hundred

6 dollars of its capital stock and the same tax on its surplus, &c., as is paid on real estate, except for the years 1893 and 1894, and for each of these years it tendered and offered to pay same as before, and the auditor of public accounts and the State of Kentucky wrongfully declined and refused to receive or accept either of said payments. In said Hewitt law, which was so accepted by plaintiff, it was provided and stipulated and the State of Kentucky therein undertook and covenanted to and with plaintiff that plaintiff should be exempt from all other taxation whatsoever so long as said tax therein provided for should be paid during plaintiff's corporate existence. Plaintiff states that its right under its said charter to pay only the sum of fifty cents on each one hundred dollars of its capital stock in full of all tax or bonus thereon of every kind was valuable to it, and this plaintiff would not have surrendered same except for the agreement of the State in said Hewitt law that the tax and rate of taxation therein provided for should exempt plaintiff from all other taxation whatsoever so long as said tax should be paid during plaintiff's corporate existence, and plaintiff specially relied upon said stipulation in said Hewitt law when it accepted its provisions as aforesaid.

The plaintiff states that the enacting of the said Hewitt law by the

State of Kentucky and plaintiff's said acceptance thereof made and now constitutes a binding, valid, and irrevocable contract between plaintiff and the State of Kentucky. The State of Kentucky therein and thereby agreed that this plaintiff might pay to said State
7 seventy-five cents on each share of its capital stock equal to one hundred dollars and on its surplus a tax equal to that on real estate, and that this should be in full of all tax, whether State, county, or municipal, and that plaintiff should not be liable for any other tax during its corporate existence.

The said rate of taxation provided for in said Hewitt law was a higher rate than that provided by law on any other property in the State at that time. Plaintiff state that its said charter has never been repealed, either expressly or by implication, and no proceedings *pro warranto* have ever been instituted against it, and said charter is now in full force and effect. The plaintiff further state that by virtue of its said contract with the State and its said acceptance of said Hewitt law the right to the rate of taxation therein provided for during its corporate existence vested in plaintiff at the time of said acceptance of said law. The State of Kentucky has no power to change, alter, or destroy said franchise or contract so made by subsequent legislation or at all. It states that any attempt on the part of the State of Kentucky to abrogate or violate said contract without plaintiff's consent and against its will is absolutely void. The State of Kentucky has no right or power to delegate to the defendant The City of Owensboro any authority to tax plaintiff in any way whatever, and any attempt by the State to do so is absolutely void. The defendant The City of Owensboro is a municipal corporation, entitled to sue and be sued, &c., and is a city of the third class under the law of this State. It is governed and controlled by the charter for cities of the third class, which was
8 approved by the General Assembly of the Commonwealth of Kentucky on the —day of ——, 18—. It has all the power of cities of the third class under said general charter and is subject to all the limitations therein imposed upon cities of that class. The defendant A. M. C. Simmons is the duly elected, qualified, and acting city tax collector for said city.

The plaintiff states that on the 17th day of April, 1893, the common council of the city of Owensboro adopted and passed an ordinance by which it was ordained and enacted that taxes should be levied for the year 1893 in said city as follows, to wit: For general revenue purposes, an ad valorem tax of seventy-five cents on each one hundred dollars of taxable property and a poll tax of one dollar and fifty cents on each male resident over twenty-one years of age and a tax of one dollar on each dog; to pay the interest accruing for the said year on the bonds in aid of the Owensboro, Falls of Rough and Green River railroad and to go into a sinking fund to meet the principal when due, an ad valorem tax of ten cents on each one hundred dollars of taxable property; to pay the expenses of maintaining the fire department, including the rent of fire-hydrants, an ad valorem tax of twenty-five cents on each one hundred dollars of taxable property; for school tuition fund, an ad valorem

tax of thirty cents on each one hundred dollars of taxable property and a poll tax of two dollars on each male resident over twenty-one years of age; for school building and repair fund, an ad valorem tax of ten cents on each one hundred dollars of taxable property, making in all a total tax of $1.50 on each one hundred dollars
9 of taxable property in said city for said year. A duly certified copy of said ordinance is filed herewith and made part hereof, marked "A."

On the 21st day of May, 1893, said common council passed and adopted another ordinance, by which it was ordained and enacted that taxes for the year 1894 in said city should be levied as follows: An ad valorem tax of fifty cents on each one hundred dollars of property subject to taxation for the year 1894 in said city for the purpose of defraying the expenses of the public schools of said city; an ad valorem tax of ten cents on each one hundred dollars of property subject to taxation in said city for said year for the purpose of paying the interest and creating a sinking fund to pay the bonds issued in payment of the subscription of the city of Owensboro to the capital stock of the Owensboro, Falls of Rough and Green River Railroad Company; an ad valorem tax of seventy-five cents on each one hundred dollars of property subject to taxation in said city for said year for the purpose of conducting and paying all the current and general expense of said city, and a poll tax of one dollar and fifteen cents on each person subject to such tax in said city for the said year to be used in paying the general expenses of said city. By section five of said ordinance it was further ordained and enacted that on all the said taxes that were not paid prior to the first day of September, 1894, there should be and was imposed a penalty of two per cent.; on all taxes not paid on or before the first day of each succeeding month an additional penalty of two per cent. for each month, and so on until
10 such penalties should aggregate ten per cent. of the amount of the tax due from any tax-payer. A duly certified copy of said ordinace is filed herewith and made part hereof, marked "B." Said ordinances were the only levy ordinances passed for said year. The plaintiff states that said common council has no power or authority to e-act either of said ordinances, and each of them is unconstitutional, inoperative, and void; but, whether said ordinances are valid or void, neither of them can confer or does confer upon the defendant Simmons any power or authority to collect any part of the taxes herein mentioned. On the — day of ——, 1894, the defendant Simmons, city tax collector as aforesaid, wrongfully levied a pretended tax-list or tax claim for the defendant The City of Owensboro against the plaintiff on certain personal property belonging to plaintiff and then and now situated in its banking-house in Owensboro, Kentucky. The said property so attempted to be levied on is as follows: One hall safe about four and one-half feet by six feet, one stove coal heater and pipe, one small table and one table four by seven feet, and seven leather-bottom chairs; and said property was so levied on as the property of plaintiff. The taxes claimed and levied for, as aforesaid, were for the year 1893, amount-

ing to the sum of eighteen hundred and eighty-four dollars and fifty-one cents, with a ten per cent. penalty of one hundred and eighty-eight dollars and forty-one cents and interest at ten per cent., amounting to one hundred and ninety-one dollars and fifty-five cents, making a total tax claim for said year of two thousand two hundred and sixty-four dollars and forty-seven cents. On the same day said defendant, Simmons, levied another pretended tax-list or tax claim for said city against plaintiff on
11 the personal property aforesaid, which was again levied on as the property of this plaintiff. The said tax claim so levied was for taxes claimed against plaintiff for the year 1894 in favor of said city, amounting to the sum of seventeen hundred and nineteen dollars and sixteen cents, and a ten per cent. penalty of one hundred and seventy-one dollars and ninety-one cents and ten per cent. interest, amounting to two dollars and ninety-eight cents, making a total tax claim for said year of eighteen hundred and ninety-four dollars and five cents. No part of said alleged tax claimed by said city and levied for, as aforesaid, for the years 1893 and 1894 was ever demanded of plaintiff by said Simmons or any one for him On the first day of October, 1894, said Simmons publicly advertised the property aforesaid for sale under said wrongful levy and posted written notices on plaintiff's banking-house in Owensboro and elsewhere in said city that he would on October 15th, 1894, at the court-house door, in Owensboro, Kentucky, expose the property aforesaid to sale at public auction to pay the amount of said two pretended tax claims. In addition to this the said Simmons, on the — day of September, 1894, wrongfully and unlawfully instituted garnishment proceedings against plaintiff to collect said pretended tax claims and serve- notices of garnishment against plaintiff on the First National Bank of Owensboro, Kentucky, J. H. Hickman, J. P. Moreland, and others, and enjoined said parties from paying to plaintiff any money or debts they might owe it, and said parties were notified and summoned by said Simmons to appear in the Daviess county court on the first day of its October term, 1894, and show cause why they should not be adjudged to pay said pretended tax claims. The said proceeding was unnecessary
12 and wrongful. The said parties were indebted to plaintiff at the time, and the effect of said notices under the law is to enjoin them from paying plaintiff the money which they owe to it. The plaintiff states that it had no property in the city of Owensboro in the year 1893 or in the year 1894 subject to taxation by said city for either of said years. Its property in said city during the whole of said period was exempt, is now exempt, and during plaintiff's corporate existence will continue to be exempt by law and by plaintiff's said contract with the State from said tax and from all taxation by said city. The plaintiff further states that even if its property within the city of Owensboro for said years is subject to taxation for municipal purposes by said city it is not liable for any part of the taxes, penalties, or interest claimed by either of said years for the reason that no assessment of any of its property for either of said years has ever been made. The said tax-lists in the

hands of the said Simmons were listed with him by the county clerk of Daviess county, and said clerk had no power or authority to so list either of said claims with said Simmons, and they are void. The board of valuation and assessment of this State created by the present revenue law of this State had no power or warrant of law to make any assessment of plaintiff's property for taxation by said city, and plaintiff states that no assessment was ever in fact made by said board or at all. The said taxes claimed, not being based on any sort of assessment, are purely arbitrary and are absolutely void for that reason. Moreover, said board never notified the county clerk of Daviess county or any one as
13 to what assessment it had attempted to make against plaintiff bank for the year 1893 until after the 15th day of August, 1893, and it would have been impossible for plaintiff to pay it before that date. There had not been even a pretended assessment of plaintiff's property before said time. A copy of the notice from the auditor of public accounts to said clerk, showing the time at which the same was transmitted, as aforesaid, is filed herewith and made part hereof, marked "C." The said board never notified said clerk as to what plaintiff's pretended assessment was for the year 1894 until after July 6th, 1894. The plaintiff could not have paid said taxes before that time. The plaintiff states that the ten per cent. penalty and the ten per cent. interest embraced in said tax-list for 1893 and also in said tax-list for 1894 are absolutely void, and plaintiff is not liable for any part of either of said penalties or for any part of said interest. The imposition of said penalties and said interest upon plaintiff is unusual, oppressive, unconstitutional, and void and is not authorized by the law of the land. Said penalties and interest *is* not provided against other tax-payers of the city of Owensboro and are not authorized against plaintiff. The plaintiff states that it does not owe to the city of Owensboro or to said Simmons any part of either of said tax claims and it is not liable therefor. It is advised that the legislature of the State of Kentucky in the present revenue law of this State, which was approved on the — day of ——, 1892, and also in the charter for cities *for* the third class in this Commonwealth, attempted to authorize the defendant The City of Owensboro to levy and collect taxes on plaintiff's property in said
14 city. It states that said acts of said legislature are unconstitutional and void. Each of said notes is an attempt, not only to impair the obligation of plaintiff's said contract under the Hewitt law with the State of Kentucky, but is also distinctly an attempt to abrogate and destroy that contract or to violate and disregard — against plaintiff's will and without its consent. The plaintiff states that said revenue law above referred to is unconstitutional and void as a whole and can confer no authority on either of the defendants to enforce the collection of any part of said taxes. It further states that in so far as either of said acts attempts to subject plaintiff's property to taxation by the city of Owensboro it is unconstitutional and void and can confer no authority upon either of the defendants in the premises, and the defendant Sim-

mons in attempting to levy for said taxes or to advertise said property for sale is a trespasser. The said Simmons threatens that he will proceed at once to sell plaintiff's property so levied on for the payment of said alleged taxes, penalties, and interest and will proceed in said county court on his said process of garnishment to harass and annoy plaintiff and to procure said county court to adjudge the payment of said taxes by said parties who are summoned as garnishees, and the plaintiff states that said Simmons is about to do all this, and that he will sell said property and will continue to prosecute said garnishment proceedings unless he is restrained by the court. It states that if said Simmons is allowed to sell said property or is allowed to prosecute his garnishment proceedings it will suffer great loss and damage, and it states that it will suffer irreparable injury unless an injunction be immediately granted against defendants. The plaintiff states that no
15 previous injunction has ever been applied for or refused in this case by any circuit judge or by any court at all.

Wherefore plaintiff prays for an order of injunction against the defendants enjoining them and each of them from collecting or attempting to collect any part of said alleged taxes, penalties, or interest, and from advertising or selling any part of plaintiff's property therefor, and from prosecuting said vexatious garnishment proceedings in said county court, and from any attempt to enforce the collection of any part of said taxes, and that such injunction may be made perpetual. It further asks the court to adjudge said tax claims, penalties, and interest to be absolutely void. Plaintiff further prays for all proper and equitable relief.

REUBEN A. MILLER, *Attorney.*

STATE OF KENTUCKY, }
County of Daviess, } *sct:*

J. Q. Haynes states that he is president of the plaintiff bank, and that he verily believes the statements in the foregoing petition to be true.

J. Q. HAYNES.

Subscribed and sworn to before me by J. Q. Haynes this October 9th, 1894.

L. O. MILES, *Ex. D. C.*

The foregoing petition is endorsed as follows: 1894, Dec.
16 22d, filed. Att.: J. A. Lyddane, cl'k D. C. C.

The exhibit marked "A," referred to in the foregoing petition, is next copied and is as follows, viz:

EXHIBIT "A."

Levy Ordinance, 1893.

Be it ordained by the common council of the city of Owensboro:

That the taxes be, and the same are hereby levied for the year 1893 as follows, to wit: For general revenue purposes an ad

valorem tax of seventy-five cents on each one hundred dollars of taxable property and a poll tax of one dollar and fifty cents on each male resident over twenty-one years of age and a tax of one dollar on each dog, to pay the interest accruing for the said year on the bonds in aid of the Owensboro, Falls of Rough and Green River railroad, and to go into a sinking fund to meet the principal when due an ad valorem tax of ten cents on each one hundred dollars of taxable property. To pay the expenses of maintaining the fire department, including the rent of fire-hydrants, an ad valorem tax of twenty-five cents on each one hundred dollars of taxable property. For school tuition fund an ad valorem tax of thirty cents on each one hundred dollars of taxable property: and a poll tax of two dollars on each male resident over twenty-one years of age: For school buildings and repair fund an ad valorem tax of ten cents on each one hundred dollars of taxable property. This ordinance to be in effect from and after its passage.

Approved April 17th, 1893.

17 A copy.

Attest: PHIL R. ZULAUF, *City Clerk.*

The exhibit marked "B" referred to in the foregoing petition is next copied and is as follows, viz:

EXHIBIT "B."

An Order Levying Taxes for Various Purposes for the Year 1894.

Be it ordained by the common council of the city of Owensboro:

SEC. 1. That an ad valorem tax of fifty cents on each one hundred dollars of property subject to taxation for the year 1894 in the city of Owensboro be, and the same is hereby levied for purposes of defraying the expenses of the public schools of said city.

SEC. 2. Be it further ordained, that an ad valorem tax of ten cents on each one hundred dollars of the property subject to taxation in the city of Owensboro for the year 1894, be, and the same is now levied, for the purpose of paying the interest and creating a sinking fund to pay off the bonds of city issued in payment of its subscription to the capital stock of the Owensboro, Falls of Rough and Green River R. R. Company.

SEC. 3. Be it further ordained that an ad valorem tax of seventy-five cents on each one hundred dollars of property subject to taxation in the city of Owensboro for the year 1894 be and the same is now levied for the purpose of conducting and paying off the current and general expenses of the city of Owensboro for the said

18 year, to be used for the purposes designated in the budget heretofore adopted for 1894.

SEC. 4. Be it further ordained, that a poll tax of one dollar and fifty cents be and the same is hereby levied upon each and every person subject to a poll tax in said city, for the year 1894, the tax to be realized therefrom is to be used as provided for in section three of this ordinance.

SEC. 5. Be it further ordained that — all taxes not paid prior to the first day of September, 1894 there shall be and there is hereby imposed a penalty of two per cent: and on all taxes not paid on or before the first day of each succeeding month there is hereby imposed an additional penalty of two per cent. for each month: which penalty shall be charged to the collector and collected by him, and the penalties so imposed shall continue up to and include the first day of January, 1895, and until the penalty shall aggregate ten per cent. on the amount of taxes due.

This ordinance shall take effect and be in force from and after its final passage.

Approved May 21st, 1893.

A true copy.

Attest: PHIL R. ZULAUF, *City Clerk.*

The exhibit referred to in the foregoing petition marked "C" is not among the papers.

The summons that issued on the foregoing petition is next copied and is as follows, to wit, viz:

Summons in Equity.

The Commonwealth of Kentucky to the sheriff of Daviess county, Greeting:

19 You are commanded to summon the City of Owensboro and A. M. C. Simmons, city tax collector of the city of Owensboro, to answer in ten days after the service of this summons a petition in equity filed against them in the Daviess circuit court by Citizens' Savings Bank of Owensboro, and warn them that upon their failing to answer the petition will be taken for confessed or they will be proceeded against for contempt, and you will make due return of this summons within ten days after the service thereof to the clerk's office of said court.

Given under my hand as clerk of said court this 10th day of October, 1894.

J. A. LYDDANE, *Clerk.*

The foregoing summons is endorsed as follows: Executed on the City of Owensboro by delivering to J. H. Hickman, mayor of said city, a true copy of the within, and on A. M. C. Simmons, city tax collector, by delivering to him a true copy of the within, October 10th, 1894. J. S. Mullican, S. D. C., by L. V. Pierce, D. S.

Afterwards, to wit, on the 11th day of October, 1894, the following order was entered herein, viz:

Order.

This day came the plaintiff, The Citizens' Savings Bank of Owensboro, and filed a written notice duly executed on each of the defendants herein, and pursuant to said notice moved the court for

an order of injunction as prayed for in the petition herein,
20 and, the court being sufficiently advised, it is adjudged that said motion be, and it is hereby, sustained, and that an order of injunction be, and the same is hereby, granted restraining the defendants, The City of Owensboro and A. M. C. Simmons, tax collector for said city, until the further order of this court from collecting or attempting in any way to collect any part of the taxes, penalties, or interest set out in the petition and claimed by the defendants from plaintiff for the years 1893 and 1894, and from advertising or selling any part of plaintiff's property therefor, and from further prosecuting the garnishment proceeding in the Daviess county court set out in the petition for the collection thereof, and from any and all attempts to enforce collection of any part of said taxes, penalties, or interest. The said taxes, penalties, and interest, the collection of which is hereby enjoined, are as follows: $1,884.51 tax with a ten per cent. penalty of $188.45 and ten per cent. interest, amounting to $191.55, for the year 1893, making a total tax claim for said year of $2,264.47, and $1,719.16 taxes and a ten per cent. penalty of $171.91 and ten per cent. interest, amounting to the sum of $2.98, for the year 1894, making a total tax claim of $1,894.05 for said year, and said defendants are now and hereby enjoined and restrained, as aforesaid, from collecting or attempting to collect any part of said taxes, penalties, or interest, and from advertising or selling any of plaintiff's property therefor, and from further prosecuting said garnishment proceeding in said county court. This order of injunction will not take effect or be in force until plaintiff shall execute before the clerk of this court a bond,
21 with surety to be approved by him, conditioned that plaintiff will pay to the defendants all damages they may sustain if it shall turn out that this order of injunction was wrongfully obtained, not exceeding, however, the sum of $8,317.04.

The notice referred to in the foregoing order is next copied and is as follows, viz:

Notice.

The defendants, The City of Owensboro and A. M. C. Simmons, tax collector for the city of Owensboro, will take notice that the plaintiff, The Citizens' Savings Bank of Owensboro, Kentucky, has this day filed its petition in the Daviess circuit court seeking to enjoin the collection of the city taxes for the years 1893 and 1894 and interest and penalties thereon, which are claimed against plaintiff by the City of Owensboro and in the hands of the defendant Simmons for collection, and that in the circuit court room, at the court-house, in Owensboro, Kentucky, on the 11th day of October, 1894, it will move the Daviess circuit court and the Hon. W. T. Owen, judge of the Daviess circuit court, to grant an injunction according to the prayer of the petition, this October 9th, 1894.

CITIZENS' SAVINGS BANK,
By REUBEN A. MILLER, *Att'y.*

The foregoing notice is endorsed as follows: Executed on the City of Owensboro by delivering to J. H. Hickman, mayor of said city, a true copy of the within, and on A. M. Simmons, city
22 tax collector, by delivering to him a true copy of the within, October 10th, 1894. J. S. Mullican, S. D. C., by L. V. Pierce, D. S.

The foregoing notice is further endorsed as follows: Filed October 11th, 1894. Att.: J. A. Lyddane, clerk.

Afterwards, to wit, on the 1st day of November, 1894, the following order was rendered herein, viz:

Order.

The defendants, The City of Owensboro and A. M. C. Simmons, this day filed a general demurrer to the plaintiff's petition herein. The defendants, The City of Owensboro and A. M. C. Simmons, this day filed notice, duly executed, on the plaintiff, and pursuant thereto moved the court as follows:

(1.) To dissolve the temporary injunction granted herein.

(2.) To dissolve the injunction in so far as it restrains the collection of the principal sum of taxes claimed for 1893.

(3.) To dissolve the injunction in so far as it seeks to restrain the collection of the penalty claimed for taxes for 1893.

(4.) To dissolve the injunction in so far as it seeks to restrain the collection of interest claimed on taxes for 1893.

(5.) To dissolve the injunction in so far as it seeks to restrain the collection of the principal sum claimed as taxes for 1894.

(6.) To dissolve the injunction in so far as it seeks to restrain the collection of the penalty claimed on taxes for 1894.

(7.) To dissolve the injunction in so far as it seeks to restrain the collection of the interest claimed on taxes for 1894.

23 To all of which the plaintiff objects.

The demurrer referred to in the foregoing order is next copied and is as follows, viz:

Demurrer.

The defendants, The City of Owensboro and A. M. C. Simmons, collector of said city, demur to the plaintiff's petition herein because the facts therein alleged are not sufficient in law to constitute a cause of action against ther.

J. D. ATCHISON, *Attorney.*

The foregoing demurrer is endorsed as follows, viz: Filed November 1st, 1894. Att.: J. A. Lyddane, clerk.

The notice referred to in the foregoing order is next copied, and is as follows, viz:

Notice.

The plaintiff, The Citizens' Savings Bank of Owensboro, will take notice that on Thursday, November 1st, 1894, at the circuit court

room, in the court-house of Daviess county, Ky., the defendants, The City of Owensboro and A. M. C. Simmons, tax collector of said city, will move the Daviess circuit court as follows: (1) To dissolve the temporary injunction granted in this action; (2) to dissolve the injunction in so far as it restrains the collection of the principal sum of taxes claimed for 1893; (3) to dissolve the injunction in so far as it seeks to restrain the collection of the penalty claimed on the taxes for 1893; (4) to dissolve the injunction in so far as
24 it seeks to restrain the collection of the interest claimed on the taxes for 1893; (5) to dissolve the injunction in so far as it seeks to restrain the collection of the principal sum of the taxes claimed for 1894; (6) to dissolve the injunction in so far as it seeks to restrain the collection of the penalty claimed on the taxes for 1894; (7) to dissolve the injunction in so far as it seeks to restrain the collection of the interest claimed on the taxes due for 1894.

CITY OF OWENSBORO AND
A. M. C. SIMMONS,
By J. D. ATCHISON, *Att'y.*

The foregoing notice is endorsed as follows: Executed on the Citizens' Savings Bank by delivering to J. Q. Haynes, pres. of said bank, a true copy of the within notice, this October 26th, 1894. J. S. Mullican, S. D. C., by H. W. Pierce, D. S.

The foregoing notice also contains the further endorsement, viz: Filed Nov. 1st, 1894. Att.: J. A. Lyddane.

Afterwards, to wit, on the 2nd day of November, 1894, the following order was entered herein, viz:

Order.

This action is set for hearing on next Tuesday evening.

Afterwards, to wit, on the 5th day of November, 1894, the following order was entered herein, viz:

Order.

The plaintiff tendered and offered to file an amended peti-
25 tion herein, to the filing of which the defendants objected.

Afterwards, to wit, on the 10th day of November, 1894, the following order was entered herein, viz:

Order.

The amended petition heretofore tendered herein is now ordered to be filed.

The amended petition referred to in the foregoing is next copied and is as follows, viz:

Amended Petition.

The plaintiff, The Citizens' Savings Bank, amends its petition and states:

That the Hewitt law referred to in the petition was an act to amend the revenue laws of the State, and it provided in section 1 of article 1 for the levy of an annual tax of forty-five cents upon each one hundred dollars of value of the real and personal estate directed to be assessed for taxation.

It levied a tax against banks, as before set out, and provided for acceptance thereof, as before set out. The said act further provided that should any bank, State or national, refuse or fail to pay the tax imposed by the said act or fail or refuse to make the consent and agreement prescribed in section 4 of the act quoted in the petition as follows:

"The shares of stock of such bank, institution or corporation and its surplus, undivided accumulation and undivided profits shall be assessed as directed in section 2 of this act, which imposed a rate of taxation of forty-four cents, and the same taxes, State, county
26 and municipal shall be imposed levied and collected upon the assessed shares, surplus, undivided profits, undivided accumulations as is imposed on the assessed taxable property in the hands of individuals. Provided that nothing herein contained shall be construed as exempting from taxation for county and municipal purposes any real estate or building owned and used by said banks or incorporations for conducting their business, but the same may be taxed for county and municipal purposes as other real estate."

The said act also repealed certain acts therein mentioned and in terms "all other acts, general and special, and parts of acts inconsistent with or not in conformity to itself."

Plaintiff was under its charter aforesaid liable for a tax rate of 50 cents to the State, and this by the terms thereof exempted it from any further taxation either to the State or any other department thereof.

There was at the time of said enactment a general act which provided that "all charters and grants of or to corporations, or amendments thereof enacted or granted, since the 14th day of Februrary, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature unless a contrary intent be therein plainly expressed, provided that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair the rights previously vested."

It was in view of difficulties hence arising and for the settlement of controversies between the State and plaintiff and others having contract rights with same that the legislature proposed
27 as in the said act and plaintiff accepted as in the petition averred, and plaintiff says that the said proposition and its acceptance did in matter of fact and law make a contract between it and the State and did, as it was meant to do, by way of compromise, settle all the controversies between them.

Plaintiff further states that afterwards a new constitution was adopted by the said State of Kentucky, which provided that "all property not exempt from taxation by the constitution shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale;" and further "that all property whether owned by natural persons or corporations shall be taxed in proportion to its value, unless exempted by this constitution, and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the General Assembly from providing for taxation based on income licenses or franchises."

And further "that the General Assembly shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may by general laws confer on proper authorities thereof respectively the power to assess and collect such taxes. The General Assembly may by general laws only, provide for the payment of license fees, on franchises, stock used for breeding purposes, the various trades, occupations and professions, or a special or excise tax;
and may by general laws delegate the power to counties,
28 towns cities or other municipal corporations to impose and
collect license fees on stock used for breeding purposes or franchises, trades, occupations and professions."

The legislature of the State afterwards by a general statue imposed an annual tax of forty-five and one-half cents upon each one hundred dollars of value of all property directed to be assessed for taxation Said act further provided "that all real and personal estate within the State and of all corporation- organized under the laws of the State, including intangible property, which shall be considered and estimated in fixing the value of corporate franchises, shall be subject to taxation and shall be assessed at its fair cash value, estimated at the price it will bring at a fair voluntary sale; and further provided that every railway company or corporation and every incorporated bank, trust company, guarantee or security company, gas company, water company, ferry company, bridge company, express company, electric light company, telegraph company, press-dispatch company, turnpike company, palace-car company, dining-car company, sleeping car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise, not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The
auditor, treasurer and secretary of state are hereby constituted
29 a board of valuation and assessment, for fixing the value of
said franchise, except as to turnpike companies, which are provided for in section 4095 of this article, the place or places where such local taxes are to be paid by other corporations on their franchise, and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the board of

valuation and assessment and for the discharge of such other duties as may be imposed on them by this act. The auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require."

"In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies whose statements shall be filed as hereinafter required by section 4092 of this article, shall annually, between the fifteenth day of September and the first day of October, make and deliver to the auditor of public accounts of this State a statement, verified by its president, cashier, secretary, treasurer, manager or other chief officer or agent, in such form as the auditor may prescribe, showing the following facts, viz: the name and principal place of business of the corporation, company or association; the kind of business engaged in; the amount of capital stock, preferred and common; the number of shares of each; the amount of stock paid up; the par and real value thereof; the highest price at which such stock was sold at a *bona fide* sale within twelve months next before the fifteenth day of September of the year in which the statement is required to be made; the amount of surplus fund and undivided
30 profits, and the value of all other assets; the total amount of indebtedness as principal, the amount of gross or net earnings or income, including interest on investments, and incomes from all other sources for twelve months next preceding the fifteenth day of September in the year in which the statement is required; the amount and kind of tangible property in this State, and where situated, assessed or liable to assessment in this State, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and such other facts as the auditor may require."

And as to the banks it provides that "all banks and trust companies shall file the reports herein required by section 4078 of this article, on or before the first day of March, 1893, and annually on or before March first, thereafter. Said reports shall be made up to and including the 31st day of the preceding December. The taxes herein provided for shall be due and payable on or before the first day of July next succeeding such report. Upon failure to make said reports or to pay said taxes as herein required, said banks and trust companies shall be subject to the same fines and penalties as prescribed in section 4091 of this article."

It says it is under a supposed authority under the said new constitution and under the acts aforesaid the defendant and its collector are claiming the right to collect of plaintiff the taxes set out in the petition.

It says that the provisions of the said new constitution and of the act of the legislature, in so far as the plaintiff is attempted to be affected thereby, are in violation of the contract made between
31 it and the State, as aforesaid, and in violation of the Constitution of the United States, which forbids any State to make any law impairing the obligation of contracts.

It moreover states that the provisions of the said new constitu-

tion contemplate equality of taxation, but under the act aforesaid, owing to the manner of assessment, the property of plaintiff is taxed one-third more than other property in Daviess county or the city of Owensboro and, taking the property of the whole State, one-half more than the property of individuals, and the manner of said assessment is in violation of the spirit of the constitution as well as violative of general law; that in assessing the real estate of individuals it is not assessed at more than one half of the price it will bring at a fair voluntary sale, and the same is true of visible personal property of individuals, while intangible property of individuals embracing rights in action almost wholly escapes all taxation because not listed for taxation at all. This fact is public and notorious, was known to the legislature enacting the statute aforesaid and to the defendants.

Wherefore it prays as in the original petition.

REUBEN A. MILLER,
Attorney for Plaintiff.

J. Q. Haynes states that he is the president of the plaintiff bank, and that he believes the statements in the foregoing amended petition to be true.

—— ——.

Subscribed and sworn to before me by J. Q. Haynes this
32 November 5th, 1894.

—— ——, *Ex. D. C.*

The foregoing amended petition is endorsed as follows, viz: Tendered Nov. 5th, 1894. Att.: J. A. Lyddane, clerk. Filed Nov. 10th, 1894. G. Hughes, D. C.

Afterwards, to wit, on the 12th day of November, a rule day herein, the following order was entered herein, viz:

Order.

The defendants this day filed their answer herein.

The answer referred to in the foregoing order is next copied and is as follows, viz:

Answer.

The defendants, The City of Owensboro and A. M. C. Simmons, collector of taxes for said city, without waiving their demurrer to the plaintiff's petition and amended petition, for answer to said petition and amended petition state that they have not knowledge or information that the provisions of sec. 7 of the plaintiff's charter constituted or was the principal inducement to plaintiff which caused it to accept said charter or to organize and begin business thereunder.

They deny that the granting to it of said charter by the State of Kentucky and its acceptance thereof or either of them con-

stituted a valid, binding, or irrevocable contract between plaintiff and the State of Kentucky, or that upon its said acceptance
33 of said grant of said charter the right to the rate of taxation therein provided for vested in it.

They deny that the act referred to by plaintiff as the Hewitt bill was passed for the purpose of giving permanence or stability to such uniform rate of taxation as was therein provided. They deny that immediately after the passage of the Hewitt law plaintiff, in consideration of any agreement by the State in said act contained, — that said tax or rate of taxation therein provided for should be in full of all tax, whether State, county, or municipal.

They deny that in said Hewitt law, which was accepted by the plaintiff, it was provided and stipulated, or that the State of Kentucky therein undertook or covenanted to or with the plaintiff, that plaintiff should be exempt from all other taxation whatever so long as said tax therein provided for should be paid during the plaintiff's corporate existence.

They deny that under plaintiff's charter there was vested in it any right to pay only the sum of $.50 on each $100 of its capital stock in full of all tax or bonus thereon of any kind, or that such provision was valuable to it, or that the plaintiff would not have surrendered same except for the agreement of the State in said Hewitt law that the tax and rate of taxation therein provided for should exempt plaintiff from all other taxation whatsoever so long as said tax should be paid during plaintiff's corporate existence, or that plaintiff especially or at all relied upon said stipulation in said Hewitt law when it accepted its provisions or at all.

They deny that the enacting of the said Hewitt law by the
34 State of Kentucky or the plaintiff's said acceptance thereof made or now constitutes a binging, valid, or irrevocable contract between plaintiff and the State of Kentucky, or that the State of Kentucky therein or thereby agreed that the plaintiff might pay to said State $.75 on each share of its capital stock equal to $100 or on its surplus a tax equal to that on real estate, or that this should be in full of all tax, whether State, county, or municipal, or that plaintiff should not be liable for any other tax during its corporate existence.

They deny that the rate of taxation provided in said Hewitt law was a higher rate than that provided by law on other property in the State at that time. They deny that by virtue of plaintiff's alleged contract with the State or its said acceptance of said Hewitt law the right to the rate of taxation therein provided for during its corporate existence vested in the plaintiff, either at the time of its acceptance of said law or at any other time.

They deny that the State of Kentucky has no power to change, alter, or destroy said franchise or alleged contract so made by subsequent legislation or at all. They deny that any attempt on the part of the State of Kentucky to abrogate or violate said alleged contract without the plaintiff's consent and against its will is absolutely void. They deny that the State of Kentucky has no right or power to delegate to the defendant The City of Owensboro any authority to tax

plaintiff in any way whatever, or that any attempt by the State to do so is absolutely void.

They deny that the common council of the city of Owens-
35 boro had no power or authority to enact the ordinances referred to by the plaintiff, levying taxes for the years 1893 and 1894, or that either of said ordinances is unconstitutional, inoperative, or void, or that said ordinances do not confer upon the defendant Simmons any power or authority to collect any part of the taxes mentioned in the plaintiff's petition, or that the defendant Simmons on the — day of ——, 1894, or at any time, as city tax collector, wrongfully levied a pretended tax-list or tax claim for the defendant The City of Owensboro against plaintiff on certain property belonging to it.

They deny that no part of said alleged tax claimed by said city and levied for, as aforesaid, *for* the years 1893 *or* 1894 was ever demanded of plaintiff by said Simmons or any one for him. They deny that said Simmons on the — day of September, 1894, or at any time wrongfully or illegally instituted garnishment proceedings against the plaintiff to collect said tax claims. They deny that the proceedings had by said Simmons *was* unnecessary or wrongful. They deny that the plaintiff had no property in the city of Owensboro in the year 1893 or in the year 1894 subject to taxation by said city for either of said years. They deny that its property in said city during the whole of said period or any part thereof was exempt, or that the same is now exempt, or that during plaintiff's corporate existence the same will continue to be exempt, by law or otherwise or by plaintiff's alleged contract with the State, from any tax or from all taxes by said city. They deny that the plaintiff's property is not liable for any part of the taxes, penalties, or interest claimed
36 for either of said years, for the reason that no assessment of any of its property for either of said years has ever been made, or that the said property is exempt for any other reason, or that a due, proper, and legal assessment of said property was not made for each of said years.

They deny that the county clerk of Daviess county had no power or authority to list the tax-lists with said Simmons, or that the same are void, or that the board of valuation and assessment of this State, created by the present revenue law of this State, had no power or warrant of law to make any assessment of plaintiff's property for taxation by said city, or that no assessment was ever in fact made by said board or at all, or that the assessments for said taxes are purely or at all arbitrary or are absolutely or at all void for that reason. They deny that the 10 per cent. penalty or the 10 per cent. interest embraced in said tax-lists for the year 1893 and the year 1894 are absolutely void or void at all, or that the plaintiff is not liable for any part of either of said penalties or interest.

They deny that the imposition of said penalties or interest upon the plaintiff is either unlawful, oppressive, unconstitutional, or void, or that it is not authorized by the law of the land. They deny that the plaintiff does not owe the city of Owensboro or said Simmons,

as collector, any part of either of said tax claims, or that it is not liable therefor.

It denies that the law under which it claims to collect said taxes or that the act of the legislature conferring upon it such power or either of them is unconstitutional or void. They deny that
37 said acts impair the obligation of plaintiff's contract under the Hewitt law with the State of Kentucky, or that it is an attempt to abrogate and destroy the contract, or to violate and disregard it against plaintiff's will or without plaintiff's consent. They deny that the said revenue law is either unconstitutional or void as a whole or any part thereof, or that the same can confer no authority on either of the defendants to enforce a collection of any part of said taxes. It denies that in so far as either of said acts attempts to subject plaintiff's property to taxation by the city of Owensboro it is either unconstitutional or void, or that the same can confer no authority on either of the defendants in the premises, or that the defendant Simmons in attempting to levy for said taxes or to advertise said property for sale is a trespasser.

They deny that if Simmons proceeds to sell said property so levied upon by him or to prosecute the said garnishment proceedings the plaintiff will suffer great or any loss or damage, or that it will suffer irreparable or any injury unless an injunction be immediately granted against the defendant.

Answering the amended petition filed herein November 10, 1894, defendants deny that plaintiff under its charter was liable for a tax rate of only fifty cents to the State, which, by the terms of its said charter, exempted it from further taxation either to the State or to any department thereof. They deny that it was in view of difficulties hence arising or for the settlement of controversies between the State and plaintiff or any other bank having a similar
38 charter and similar rights to the plaintiff or contract rights with the State that the legislature proposed as in the Hewitt act, or that it was thus or for these reasons that the plaintiff accepted the same.

They deny that the said proposition or its acceptance or either in matter of fact or law make a contract between it or similar banks in the State, or that it did or that it meant to do by way of compromise settle all the controversies between them. They deny that the provisions of the new constitution of Kentucky or of the acts of the legislature made pursuant thereto and referred to in the amended petition, in so far as plaintiff is attempted to be affected thereby, are in violation of the contract made between it and the banks in said State and the State of Kentucky or in violation of the Constitution of the United States, which forbids any State to make any law impairing the obligation of contracts.

They deny that plaintiff's property is taxed at a rate one-third greater or any greater than other property in Daviess county or the city of Owensboro, or at any greater rate than the property of individuals situated in the same jurisdiction in which the plaintiff or other banks are situated, or that the manner of the assessment of

banks is in violation of the spirit of the constitution or is a violation of the general law.

They have not knowledge or information sufficient to constitute a belief that in assessing the real estate of individuals it is not assessed at more than one-half of the price it will bring at a fair voluntary sale, or that the same is true of visible personal property of individuals, or that intangible property of individuals embracing rights in action almost or at all wholly escape all taxation because not listed for taxation at all, or that this fact or that these facts are public or notorious, or that they or any of them were known to the legislature enacting the statute aforesaid or to these defendants.

Further answering, these defendants state that by an act of the General Assembly of the Commonwealth which was approved and became a law on the 14th day of February, 1856, and was reported in chapter 62, page 121, of Stanton's Revision, which was incorporated in the General Statutes of the Commonwealth of Kentucky as section 8, in chapter 68, it is provided as follows: "All charters and grants of and to corporations or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: Provided that whilst privileges and franchises so granted may be changed or altered, no amendment or repeal shall impair other rights previously granted." Defendants further state that by section 6, article 2, of chapter 92 of the General Statutes referred to by plaintiffs as the Hewitt bill it is provided as follows: "This act shall be subject to the provisions of section 8, chapter 68, of the General Statutes." They say that the said provision last quoted refers to and means the statute hereinbefore quoted, commonly known as the act of 1856. They state that plaintiff's charter was granted to it by the legislature of Kentucky since the passage of the said act of 1856, and that the provisions of the said act of 1856 applied to and became a part of the plaintiff's charter to the same extent and with the same effect as though recopied and incorporated in said charter, and that by reason thereof the State of Kentucky in granting to plaintiff its charter reserved to the legislature of said State full power, authority, and right to alter, amend, or repeal said charter at any time it might see proper to do so, and that the meaning, intent, and purpose of the provisions embraced in the charter of the plaintiff and the other banks organized under the law of Kentucky was that the rate of taxation therein specified should be paid by said banks, in lieu of all other taxes, so long as the State saw proper to consent thereto, but that the State distinctly reserved the rate of taxation at any time, and the plaintiff and all the other banks incorporated since 1856 accepted their charters and organized under them with the distinct agreement and understanding with the State of Kentucky that the rate of taxation therein provided would only continue at the pleasure of the State, and that the State reserved the power to increase the rate of taxation or to change the mode of taxation at any time. Further answering,

defendants state that during the session of the legislature of the State of Kentucky held in 1886, at which session the said Hewitt bill was enacted and became a law, the said legislature, having the legal authority and perfect right so to do, was about to enact a law subjecting all banks incorporated since 1856 in said State or organized in said State after said date to the same rate of taxation that was paid or might be paid by individuals, both State, county, and municipal,

41 and that the said banks, during the pendency and discussion of said bill in the house and senate of the legislature, was fully represented by their lobbyists to look after the interest of said banks, and the said legislature provided that unless the banks accepted the provisions of article 2 of said Hewitt bill they should be subject to the same rate of taxation that should be paid by individuals, and, knowing and understanding that they had no irrevocable rights under their charters, they accepted the provisions of said act, and especially did the plaintiff so do, because the rate of taxation therein provided was less than one-half of the tax that it would have been required to pay had it not accepted said act; moreover, it was distinctly understood by each and every bank in the State of Kentucky or organized therein since 1856 that the provisions of said Hewitt bill constituted no irrevocable contract with any bank accepting its provisions because of the provisions of section 6, article 2, of the said act, and while the said act was under consideration in the senate, and while the said senate was considering article 2, the said banks, through their agents and lobbyists, procured to be introduced into the said senate an amendment to said section 6 to the effect that the said act should not be subject to the provisions of section 8 of chapter 68 of the General Statutes until after the expiration of ten years, and this amendment was rejected by the senate as well as by the house, and thereby the said legislature distinctly and expressly declared to all the banks that the said act should be subject to repeal, amendment, or modification

42 at the pleasure of any future legislature of the State of Kentucky, and the said banks at said time and ever since have had full notice that the rate of taxation therein provided should continue only at the pleasure of the State, and that the acceptance of said act had no effect except to give to said banks the right to pay the rate of taxation therein named during such period as the legislature of Kentucky in its judgement and discretion might consent thereto.

Moreover, defendants aver and believe the fact to be that the only purpose of section 4 of article 2 of the said Hewitt bill was to enable the State to induce the banks therein existing organized prior to 1856 to surrender the irrevocable rights which they held under their charters, and that the provisions of section 4 were unnecessary with reference to all banks incorporated or organized since said date, whether the same be State or national banks.

Wherefore defendants pray that the temporary injunction granted herein be dissolved; that the court adjudge them to be entitled to collect from plaintiff the taxes and each part thereof, including penalty and interest, claimed by said city; that the plaintiff's

petition be dismissed; that they have judgement for their cost, and for all general and proper relief.

J. D. ATCHISON,
Att'y for Defendants.

J. K. Tharp says that he is mayor *pro tem.* of Owensboro, and that the mayor-elect is absent, and he believes that statements of the foregoing answer are true.

J. K. THARP.

Sworn to before me this 22nd Jan., 1895.

G. HUGHES, *D. C.*

43 The foregoing answer is endorsed as follows: Filed Nov. 26th, 1894. Att.: J. A. Lyddane, clerk.

Afterwards, to wit, on a rule day herein on the 12th day of November, 1894, the following order was entered herein, viz:

Order.

The defendant The City of Owensboro this day filed a written notice herein and moves the court to strike out the last clause of the plaintiff's amended petition, beginning with the words "It moreover states that the provisions," and continue to the end, because said part of said pleading states no cause of action in the plaintiff's favor.

The motion to strike out referred to in the foregoing order is next copied and is as follows, viz:

Motion to Strike Out.

The defendant The City of Owensboro moves to strike out the last clause of plaintiff's amended petition, beginning with the words "It moreover states that the provisions," and continuing to the end, because said part of said pleading constitutes no cause of action in plaintiff's favor.

POWERS & ATCHISON AND
LITTLE & LITTLE,
Counsel for Defendants.

The foregoing motion is endorsed as follows, viz: Filed Dec. 10th, 1894. Attest: J. A. Lyddane, cl'k.

Afterwards, to wit, on the 10th day of December, 1894, the following order was entered herein, viz:

44 *Order.*

The defendants, The City of Owensboro and A. M. C. Simmons, this day filed notice, duly executed, on the plaintiff on the 28th day of November, 1894, and pursuant thereto moved the court (1) to

dissolve the temporary injunction granted in this action; (2) to dissolve the injunction in so far as it seeks to restrain the collection of the principal sum of taxes claimed for the year 1893; (3) to dissolve the injunction in so far as it seeks to restrain the collection of the penalty claimed on the taxes for 1893; (4) to dissolve the injunction in so far as it seeks to restrain the collection of the interest claimed on the taxes for 1893; (5) to dissolve the injunction in so far as it seeks to restrain the collection of the principal sum of taxes claimed for 1894; (6) to dissolve the injunction in so far as it seeks to restrain the collection of the penalty claimed on the taxes for 1894; (7) to dissolve the injunction in so far as it seeks to restrain the collection of the interest claimed on the taxes due for 1894; to all of which the plaintiff objects.

The notice referred to in the foregoing order is next copied and is as follows, viz:

Notice.

The plaintiff, The Citizens' Savings Bank of Owensboro, Ky., will take notice that on Monday, December 10th, 1894, at the circuit court room, in the court-house of Daviess county, Ky., the defendants, The City of Owensboro and A. M. C. Simmons, tax collector for said city, will on the whole case move the Daviess circuit court and the Hon. W. T. Owen, judge of said court, as follows: (1) To dissolve the temporary injunction granted in this action; (2) to dissolve the injunction in so far as it seeks to restrain the collection of the principal sum of taxes claimed for 1893; (3) to dissolve the injunction in so far as it seeks to restrain the collection of the penalty claimed on the taxes for 1893; (4) to dissolve the injunction in so far as it seeks to restrain the collection of the interest claimed on the taxes for 1893; (5) to dissolve the injunction in so far as it seeks to restrain the collection of the principal sum on the taxes for 1894; (6) to dissolve the injunction in so far as it seeks to restrain the collection of the penalty claimed on the taxes for 1894; (7) to dissolve the injunction in so far as it seeks to restrain the collection of the interest claimed on the taxes for 1894.

CITY OF OWENSBORO AND
A. M. C. SIMMONS,
By J. D. ATCHISON, *Att'y.*

The foregoing notice is endorsed as follows, viz: Executed on Citizens' Savings Bank by delivering to J. Q. Haynes, pres. of said bank, a true copy of the within, Nov. 28th, 1894. J. S. Mullican, S. D. C., by H. W. Pierce, D. S.

The foregoing notice is further endorsed as follows: Filed Dec. 10th, 1894. Att.: J. A. Lyddane, clerk.

Afterwards, to wit, on the 20th day of December, 1894, the following order was entered herein, viz:

Order.

This day came the defendants and moved the court to set
46 this action for hearing on the motion to dissolve the injunction herein, and defendant objects. Ordered that this case be set for hearing on the said motion to set for hearing on the eleventh day of this term, at two o'clock p. m.

Afterwards, to wit, on the 22nd day of December, 1894, the following order was entered herein, viz:

Order.

This day came the plaintiff and filed an amended petition herein; to the filing of which the defendant The City of Owensboro objects and refiles its demurrer to the petition as amended.

The amended petition referred to in the foregoing order is next copied and is as follows, viz:

Amended Petition.

1. The plaintiff, The Citizens' Savings Bank of Owensboro, Kentucky, by leave of court amends its petition herein and states that the defendant city was incorporated by an act of the legislature of the State of Kentucky approved on the 18th day of March, 1882, which is now specially referred to and which act of incorporation or charter was in force at the time said city levied taxes for the year 1893. Plaintiff asks that the provisions of said charter be taken and considered as part of this amendment.

By the forty-second section of said charter the said city was empowered to levy taxes against all real estate within the corporate limits thereof, except that held by religious denominations, for
47 educational purposes, not exceeding one acre, land on which seminaries of learning are erected or used for educational purposes, and such property as is exempt by the law of the State.

By the forty-third section said city was empowered to levy taxes against all personal property, choses in action, monies, deposits, rights, or demands, or any interest, share, or partnership therein, wherever situated, unless taxed elsewhere, owned or held by persons domiciled or permanently residing in said city on the 10th day of January in the year in which the assessment is made, or which shall be so owned or held by any corporation created by the laws of Kentucky and having its chief office or place of business in said city, except bonds of the United States exempt by law from taxation, stocks held by such persons or corporations or other corporations created by the laws of Kentucky which are taxed by the laws of Kentucky and subject to a further deduction of the amount of such choses in action, debts, rights, and demands of the debts which said persons or corporations may actually owe as principal

debtors on said 10th day of January, and the further sum of one hundred dollars, which is exempt from taxation.

Section forty-five of said chapter makes it the duty of the city assessor to assess the taxable property and tithes of the city for that year with whom persons liable to list for taxation shall list their property.

It states that under authority conferred upon said city by the said charter, and not otherwise, the said city, by ordinance which was enacted and which took effect on the 17th day of April, 1893, made the following tax levies for the year 1893, to wit:

48	For general revenue purposes on $100	75 cents.
	To pay railroad bonds, &c	10 "
	To pay expense of maintaining fire department, including rent of fire-hydrants.....	25 "
	To pay school tuition.....	30 "
	To pay school building and repair fund	10 "

The said tax being ad valorem, and the amount aforesaid being on each one hundred dollars in value. By the said charter it is made the duty of the assessor to assess the property liable to taxation aforesaid, and to make due returns thereof on or before the first Monday in April of each year. The said city did have an assessor for the said year 1893, and he did assess the property liable to taxation, as aforesaid, and returned his assessment thereof to the city council of said city on or before the said first Monday in April, which was before said 17th day of April, 1893, but the said assessor did not assess the property of plaintiff, and the name of plaintiff did not appear in the assessment returned by said assessor, nor was any omission in this respect supplied by the board of supervisors or in any way or by any corporate action of said city.

The taxes attempted to be collected of plaintiff for the year 1893 are claimed only in virtue of the action of the city authorities under the general revenue law of the State, which was not certified to the county clerk of Daviess county until the 15th day of August, 1893. The taxes attempted to be collected of plaintiff for the said year 1893 are as follows, to wit:

City revenue of $125,607.67.....		$942.06
	Railroad bonds.....	125.61
49	School tuition fund.....	376.82
	School building and repairs.....	125.61
In the way of interest on foregoing.....		191.55
In the way of penalty, ten per cent.....		188.41
For fire department...		314.01
Total....		$2,264.47

Plaintiff states that the general revenue law of the State became a law on the 11th day of November, 1892. Under this law the banks of the State were required to make reports on or before the first day of March, 1893, which reports were to embrace assets as

of the 31st of December preceding, and it is on the basis of the report made by plaintiff as therein required and covering one year prior to December 31st, 1892, that the defendants, The City of Owensboro and A. M. C. Simmons, city tax collector, are attempting to enforce against plaintiff the taxes and penalties aforesaid for the year 1893, the said sum of $— being the amount assessed against plaintiff by the city authorities for said purpose for that year. The taxes attempted to be collected for the year 1894 are based on a similar report and assessment made as of the 31st of December, 1893. It states that the law assigning the defendant city to the third class and making it a city of the third class was approved on the 14th day of June, 1893, the said city at said date and now having a less population than ten thousand, the last enumeration of population before said 17th day of April, 1893, showing a population of 9,837 and no more.

By the provisions of this law governing cities of the third class in this Commonwealth, the defendant city is empowered to
50 levy and collect taxes upon all property, franchises, and privileges taxable for said purposes. The said city has passed no tax ordinance levying taxes for the year 1893 under the act aforesaid for the governing of cities of the third class, which is now the charter of the defendant city, and the only tax ordinance for said year 1893 being under and by virtue of the act of incorporation approved March 18th, 1882. It states that under the constitution of the State of Kentucky the tax rate allowed in favor of cities of the third class, with a population less than ten thousand, for ordinary revenue, is seventy-five cents on each one hundred dollars in value of property, and the tax rate under the ordinance of April 17th, 1893, exceeds said rate by twenty-five cents on each one hundred dollars of property levied by said ordinance for expenses in maintaining fire department, including rent of fire-hydrants after a levy of seventy-five cents or in addition to the levy of seventy-five cents on the one hundred dollars of property for its revenue, the said expenses of maintaining the fire department and paying hydrant rental being current expenses of the city and payable alone out of the seventy-five cents provided by law, and the other twenty-five cents is attempted to be collected without authority.

2. Plaintiff states that under the constitution and laws of the State of Kentucky provided for and regulating the assessment of all property for the purposes of taxation there is exempt from taxation to each citizen tax-payer who is the head of a family in household goods or other personal estate the sum of two hundred and fifty dollars, and on this sum there is no assessment for tax-
51 ation and no tax levied or collected. The same is true of the assessment levied and collection of taxes within and by the city of Owensboro. It states that the assessment made against it for the years 1893 and 1894 complained of in this action, while in form a franchise tax, *are* in substance and in fact a tax upon the holdings or interest of the respective shareholders of plaintiff, many of whom are heads of families and resident citizens of the city of Owensboro and State of Kentucky. As to plaintiff and its share-

holders, the defendant city has assessed their property for the years 1893 and 1894 without allowing the said exemption of two hundred and fifty dollars, as provided by law, and without allowing any exemption whatever, thereby taxing plaintiff's capital and the shares of interest of its stockholders at a greater rate than the rate it has assessed against capital in the hands of individual citizens of said city and State. The plaintiff states that for these reasons the said tax assessments are void.

3. The plaintiff further amends its petition and states that there are within the city of Owensboro two national banks, to wit, the First National Bank of Owensboro and the Owensboro national bank, and that there are many other national banks engaged in the business of banking within the State of Kentucky. The said two national banks in Owensboro are engaged, like the plaintiff, in a general banking business in said city, and are in close, active, and daily competition with plaintiff and the other State banks in
52 said city. The capital stock, surplus fund, and undivided profits of said national banks are and during the years 1892, 1893, and 1894 were wholly invested in and represent the bonds of the United States Government, which bonds constitute and represent the capital stock, surplus fund, and undivided profits of said banks, which, being thus invested, are exempt by law from any and all tax by the State of Kentucky and the city of Owensboro. The said bonds representing the capital stock, surplus, and undivided profits of said national banks are jointly owned by the shareholders thereof, their respective interests in said bonds being in proportion to their respective shares of stock. The said national banks are organized under the national bank laws of the United States, and their stockholders are entitled to the protection afforded by said laws against unlawful taxation and against being subjected to a greater rate of taxation than is authorized upon their capital in the hands of individual citizens of the State of Kentucky, as provided by section 5219 of the Revised Statutes of the United States. All said national banks are banking associations incorporated under the banking laws of the United States Government, known as the national currency act and the several amendments thereto, and as such said national banks are within the provisions of the present revenue law of the State of Kentucky with reference to taxation of foreign corporations and are foreign corporations. The bonds aforesaid owned by said banks are deposited by them in the United States Treasury, in the city of Washington, and have been thus deposited for more than three years last past, and a large portion of the business of said banks has for said time been transacted and conducted outside of the State of Kentucky. A large
53 portion of the receipts, profits, and earnings of said banks have been received from and earned by their business outside of the city of Owensboro and State of Kentucky. The plaintiff states that if the defendant city has any authority of law to collect from said banks any tax on their capital stock, surplus funds, undivided profits, gross or net earnings, it can only do so under the provisions of said revenue law concerning foreign corporations

and to the extent that their capital, surplus, profits, receipts, and earnings have been invested and earned in the city of Owensboro and State of Kentucky. It states that the said national banks are also depositories of and agents for the United States Government, and that their authority to conduct business is derived solely from the United States Government. They are not creatures of the State of Kentucky, nor do they derive their franchise or any right or power from the government of the State of Kentucky, but solely and only from the United States Government. Said banks, in consideration of the grant of their franchises by the Government of the United States and the privileges incident to the conduct of their business, are charged by said Government and have paid annually since their organization a tax upon said franchise to the Government of the United States. Now plaintiff states that it is provided by section 171 of the present constitution of the State of Kentucky that taxes shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax, and it therefore states that any revenue law provided by the State of Kentucky against the banks of the State and of the city of Owensboro that does not secure to the plaintiff an equal rate of taxation with
54 the other banks that are in competition with it in the city of Owensboro and does not provide a uniform rate of taxation for all the banks within said city is unconstitutional and void, and plaintiff states that for the reasons aforesaid the present revenue law of the State of Kentucky under which the taxes set out in the petition are attempted to be collected is unconstitutional and void.

Wherefore the plaintiff prays as originally.

REUBEN A. MILLER,
Att'y for Pl'ff.

The foregoing amended petition is endorsed as follows: 1894, Dec. 22d, filed. Att.: J. A. Lyddane, cl'k D. C. C.

The demurrer referred to in the foregoing order as being refiled to the amended petition above copied has been heretofore copied herein on pages 22 and 23.

Afterwards, to wit, on the 24th day of December, 1894, the following order was entered herein, viz:

Order.

The defendants' motion herein to set for hearing the motion to dissolve the injunction herein coming on for hearing and the court, being advised, sustained said motion; to which the plaintiff excepts. It is ordered that this case be set for hearing, on said motion to dissolve the injunction, on next Monday, the 31st day of December, 1894; to which said plaintiff objects and excepts.

55 Afterwards, to wit, on the 4th day of January, 1895, the following order was entered herein, viz:

Order.

The motion made herein on a former day of this term is continued.

Afterwards, to wit, on the 23rd day of January, 1895, the following order was entered herein, viz:

Order.

The defendant- *is* ruled to verify *its* answer herein. This case is set for hearing on the fourth day of the present term. The plaintiff in the foregoing action objects to its hearing because it does not stand for trial.

Afterwards, to wit, on the 24th day of January, 1895, the following order was entered herein, viz:

Order.

The plaintiff filed a demurrer to the defendants' answer and also filed a reply herein; to which the defendants object and except. The defendant- filed a demurrer to the amended petition.

The demurrer to the defendants' answer referred to in the foregoing order is next copied and is as follows, viz:

Demurrer.

The plaintiff, The Citizens' Savings Bank of Owensboro, demurs generally to the answer of the defendant- for the reason that said answer does not state facts sufficient to constitute a defense to this action.

REUBEN A. MILLER, *Att'y.*

56 The plaintiff, The Citizens' Savings Bank of Owensboro, Kentucky, for reply to the answer of the defendants, filed November 26th, 1894, at rules, denies that the provisions of the act of 1856 mentioned in the answer applied to or became a part of the plaintiff's charter to the same extent or with the same effect as though copied or incorporated into said charter, or that it applied to or became a part of the plaintiff's charter at all, or that by reason thereof or otherwaise the State of Kentucky in granting the plaintiff's charter reserved to the legislature of said State or at all full or any power or authority or right to alter, amend, or repeal said charter at any time it might see proper to do so or at all, or that the meaning, intent, or purpose of the provisions embraced in the charter of plaintiff or the other banks organized under the law of this State was that the rate of taxation therein specified should be paid by said banks in lieu of all other taxes only so long as the State saw proper to consent thereto, or that said charter had or can have any such meaning, intent, or purpose, or that the State distinctly or

otherwise reserved the rate of taxation at any time, or that the plaintiff or any of the other banks within the State incorporated since 1856 accepted its charter or their charters or organized under it or them with the distinct agreement or understanding or with any agreement or understanding with the State of Kentucky that the rate of taxation therein provided would only continue at the pleasure of the State, or that the State reserved the power to increase the rate of taxation or to change the mode of taxation at any time or at all, or that during the session of the legislature of the State of
57 Kentucky held in 1886, at which the Hewitt law was enacted, the legislature, having the legal or any authority or perfect or any right so to do, was about to enact a law subjecting all banks incorporated since 1856 in said State or organized in said State after said date or any of them to the same rate of taxation that was paid or might be paid by individuals, either State, county, or municipal, or that the said banks or any of them during the pendency or discussion of said bill in the house or senate of said legislature was fully or at all represented by their lobbyists or any lobbyists to look after their interest or at all, or that the legislature provided that as soon as the banks accepted the provisions of article 2 of said Hewitt bill they should be subjected to the same rate of taxation that should be paid by individuals, or that the legislature had power to make any such provisions, or that the plaintiff or any of said banks knew or understood that they had no irrevocable rights under said charters, or that so knowing or understanding they accepted the provisions of said act or accepted them at all except in the manner and for the reason set out in the petition herein, or that the plaintiff accepted said act for any reasons except those set out in the petition herein, or that it accepted it because the rate of taxation therein provided was less than one-half of the tax that it would have been required to pay had it not accepted said act, or that it was distinctly or at all understood by each or every or any bank in the State of Kentucky or organized therein since 1856 or by the plaintiff that the provisions of said Hewitt bill constituted no irrevocable contract with any bank accepting its pro-
58 visions because of the provisions of section 6 of article 2 of the said act, or that while said act was under consideration in the senate or while said senate was considering article 2 or at any time the said banks, through their agents or lobbyists or otherwise, procured to be introduced in said senate an amendment to said section 6 to the effect that the said act should not be subject to the provisions of section 8 of chapter 68 of the General Statutes until after the expiration of ten years or any amendment, or that said alleged amendment was rejected by the senate or by the house, or that thereby the said legislature distinctly or expressly or otherwise declared to all the banks or to any of them or to the plaintiff that the said act should be subject to repeal, amendment, or modification at the pleasure of any future legislature of the State or should be subject to repeal, amendment, or modification at all, or that the said banks at said time or at any time have had full or any

notice that the rate of taxation therein provided should continue only at the pleasure of the State, or that the acceptance of said act had no effect except to give to said banks the right to pay the rate of taxation therein named during such period as the legislature in its judgment or discretion might consent thereto, or that the only purpose of section 4 of article 2 of said Hewitt bill was to enable the State to induce the banks therein existing organized prior to 1856 to surrender the irrevocable rights which they held under their charters, or that the provisions of section 4 were unnecessary with reference to the banks incorporated or organized since said date.

Wherefore, having replied, the plaintiff prays as originally.

59 REUBEN A. MILLER, *Att'y.*

J. Q. Haynes states that he is the president of the plaintiff bank, and that he believes the statements in the foregoing reply to be true.

J. Q. HAYNES.

Subscribed and sworn to before me by J. Q. Haynes this the 23rd day of January, 1895.

L. O. MILES, *Ex. D. C.*

The foregoing demurrer and reply are endorsed as follows: Filed Jan. 24, 1895. Attest: J. A. Lyddane, clerk.

Afterwards, to wit, on the 2nd day of March, 1895, the following judgmeut was entered herein, viz:

Judgment.

This cause having been heard on the motion of defendants to dissolve the injunction granted herein and on the demurrer to the petition of plaintiff and amended petitions, and the court being sufficiently advised, the said demurrer is sustained, to which plaintiff excepts, and the plaintiff failing to plead further the said petition and amended petitions are dismissed, to which the plaintiff excepts.

It is further adjudged that the said temporary injunction be, and the same is hereby, dissolved, and to this plaintiff excepts; and on defendants' motion to assess damages on account of said

60 injunction *and* the court, being advised, does hereby assess the said damages at 5% of the amount enjoined, which amounts to the sum of $207.92, which the court now adjudges against the plaintiff, and to this the plaintiff excepts. It is further adjudged by the court that the defendants recover against plaintiff the cost by them expended herein and execution be awarded against it, to which it excepts, and to this judgment and every part of it plaintiff excepts and prays an appeal to the court of appeals, which is granted; and on its further motion the said plaintiff is permitted to supersede the judgment aforesaid by executing bond, with good security, to be approved by the clerk of this court, conditioned to pay all damages defendants may sustain by reason of the said appeal, to which the defendants object, and on the execution of such

bond said order of injunction is hereby continued during the pendency of the said appeal, to which the defendants except. It is further ordered, however, that if the defendants shall within twenty days after the entry of this order take a transcript of the record herein and shall in writing notify the plaintiff thereof and shall move the court of appeals to revise this order the status existing immediately before the entry of this judgment shall be maintained, but only until such action by the court of appeals except as said court declines to revise this order, in which case it continues until the determination of the appeal.

On the hearing of the motion to dissolve the injunction the entire record was read, including the depositions for plaintiff and defendants, and the defendants offered to read the proceedings from
61 the journal of the house of representatives and of the senate of the Kentucky legislature, the session 1885 and 1886, in so far as said houses had under consideration article 2 of the revenue bill, commonly known as the Hewitt bill, to be found on pages 1238 to and including 1253, 1292 down to and including pages 1299 of the Journal of the House of Representatives, page 1304 down to and including page 1317, and 1392 down to and including the words "and it was decided in the affirmative," on page 1397 of the Journal of the Senate, to which the plaintiff objected, and the court overruled the objection and permitted the defendants to read said parts of said journals, to which the plaintiff excepted.

The depositions in this case are next copied and will be found on the next page of this record.

Daviess Circuit Court.

CITIZENS' SAVINGS BANK, OWENSBORO SAVINGS BANK, Owensboro National Bank, Farmers' and Traders' Bank, and Deposit Bank of Owensboro, Plaintiffs,
against
CITY OF OWENSBORO, &C. } Depositions.

The deposition of Herman Naunin, taken by consent at the law office of R. A. Miller, in the city of Owensboro, Kentucky, on the 28th day of December, 1894, to be read as evidence on behalf of the plaintiffs on the trial of each of the above-styled actions, it being agreed by the parties that the following
62 depositions may be read on the trial of each of the above-styled actions on behalf of the plaintiffs therein.

Witness, being first duly sworn, deposes and says:

Questioned by WILFRED CARICO, att'y for Owensboro Nat'l Bank:

No. 1. State your age, residence, and occupation.

Ans. Thirty-seven years old; reside in Owensboro, Kentucky, and I am assistant cashier of the Owensboro national bank.

No. 2. How long have you held the position of assistant cashier of the Owensboro national bank?

Ans. About three years.

No. 3. Prior to that time at what were you engaged, and how long, in connection with said bank?

Ans. Prior to that time I was engaged as book-keeper, since 1888.

No. 4. What was the amount of the capital stock, surplus, and undivided profits of the Owensboro national bank on the 31st day of December, 1892?

Ans. Capital stock, $125,000; surplus, $30,000, and undivided profits, $79.20, making a total of $155,079.27.

No. 5. What was the capital stock, surplus, and undivided profits on the 31st day of December, 1893?

Ans. Capital stock, $125,000; surplus, $30,000, undivided profits, $1,699.50, making a total of $156,699.50.

No. 6. What amount of United States bonds did the bank own at these respective dates?

Ans. It owned $231,250.

No. 7. When did the bank become the owner of these bonds?

63 Ans. $31,250 in April, 1889, and the $200,000 in February, 1890.

No. 8. Where have these bonds been since they were owned by said bank?

Ans. Deposited with the Treasurer of the United States, in Washington city.

No. 9. What is the amount of interest collected yearly on these bonds?

Ans. Nine thousand three hundred and twelve dollars and fifty cents.

No. 10. At what time of the year is it collectable?

Ans. Quarterly.

No. 11. What percentage of tax and on what does the bank pay to the Federal Government?

Ans. It pays 1 per cent. on the circulation, twenty-eight thousand one hundred and twenty dollars.

No. 12. What percentage of the circulation issued by the plaintiff bank is kept by the Federal Government?

Ans. They issue ninety per cent. of the amount of the bonds and ten per cent. is kept.

No. 13. What is the average amount of deposits kept by the bank outside of Kentucky?

Ans. Five thousand dollars.

No. 14. Where is it kept?

Ans. Part in New York and part in Cincinnati.

No. 15. What interest is paid by the Owensboro national bank, if any, on these deposits?

Ans. Two and one half per cent. in Cincinnati and nothing in New York.

64 No. 16. State whether or not all the capital, including surplus fund, owned in its own right by the Owensboro national bank is or not invested in these United States bonds.

Ans. It is invested.

Examined by R. A. MILLER, attorney for Citizens' Savings Bank:

No. 1. How many national banks are there in the city of Owensboro?

Ans. Two.

No. 2. What is the other one?

Ans. First national bank.

No. 3. What is its capital stock?

Ans. One hundred and thirty-seven thousand dollars, I think.

No. 4. Do you know how many bonds it owns?

Ans. No, sir; I do not.

Examined by CARICO, att'y for Owensboro National Bank:

No. 1. State whether or not the one per cent. per annum upon the circulation paid by the Owensboro national bank to the Federal Government is the only duty imposed upon the bank by the Federal Government.

Ans. We pay an examiner twenty-five dollars every six months for making an examination of the bank, and we also pay yearly the cost of issuing bills for destroyed bills.

Cross-examined.

Question- by J. A. ATCHISON, attorney for the city:

No. 1. About how much was your bank assessed for taxation for the years 1893 and 1894?

65 Ans. One hundred and fifty-five thousand and seventy-nine dollars and twenty-seven cents for 1893 and one hundred and fifty-six thousand and ninety-nine dollars and fifty cents for 1894.

No. 2. What has been the market value of the stock of your bank during the years 1893 and 1894?

Ans. There was none sold in 1893 or 1894 that I know of.

No. 3. What was your stock quoted and held at during 1893 and 1894?

Ans. I don't know that it was quoted or held at anything. I never paid much attention to it. There was none sold and none on the market.

No. 4. What dividends has your bank paid during 1893 and 1894?

Ans. Four per cent. semi-annually.

No. 5. What taxes has your bank paid in the State of Kentucky to any department of the government for the years 1893 and 1894?

Ans. I have forgotten the exact amount. I think it was six hundred and seventy-five dollars for the years 1893 and 1894.

No. 6. Do you know what per cent. that was on your capital stock?

Ans. No, sir; I do not.

No. 7. Have you paid as much as seventy-five per cent. on each one hundred dollars of your capital stock during those years?

Ans. No, sir.

No. 8. Can you state how much less than seventy-five cents
66 you have paid?

Ans. I can't give you the exact figures; I don't know the exact amount paid.

No. 9. When did your bank become a national bank? When was it organized?

Ans. As a national bank in April, 1889.

No. 10. Had it been a State bank before it was organized as a national bank?

Ans. Yes, sir.

No. 11. When was it organized as a State bank?

Ans. In September, 1888.

No. 12. Is your bank or not a depository for public monies of the United States?

Ans. It is.

No. 13. When was it made such?

Ans. In February, 1890.

No. 14. When was it you purchased the two hundred thousand dollars of Government bonds?

Ans. At the same time, February, 1890.

No. 15. Can you state why this purchase was made at that time—for what reason or under what requirements?

Ans. We had to deposit the bonds to secure the money deposited by the collector here, post-office, &c., and they were purchased by a New York correspondent.

No. 16. Do you mean to say that this two hundred thousand dollars of Government bonds were purchased because required by the Government in order to constitute your bank a Government depository?

67 Ans. Yes, sir.

No. 17. What amount of Government deposits is your bank allowed to keep on hand?

Ans. Two hundred thousand dollars.

No. 18. Does it lend this money to its customers?

Ans. No; I think not.

No. 19. Is it not true that by reason of the deposit of the two hundred thousand dollars of bonds your bank is allowed to keep on hand and to use two hundred thousand dollars of Government money deposited in it?

Ans. Well, we have the same two hundred thousand dollars invested in the bonds.

No. 20. Do you mean to say that your investment in the two hundred thousand dollars of bonds constitute the two hundred thousand dollars of the Government's money deposited with your bank?

Ans. That is what the bonds are purchased for.

No. 21. They were not purchased by the bank's own money?

Ans. They were and they were not. Our New York correspondent purchased the bonds and we refunded them as the Government deposited with us.

No. 22. Do you mean to say that you paid for the bonds out of the deposits the Government made with you?

Ans. Yes, sir.

No. 23. What is the correct rate of discount for which your bank lends money?

Ans. Nine per cent.

68 No. 24. State as near as you can what has been the average amount of your loans during 1893 and 1894.

Ans. Two hundred and twenty-five thousand dollars.

No. 25. About what has been your average deposit during the same periods?

Ans. About two hundred thousand dollars.

No. 26. About how much reserve does your bank keep on hand, including that which it has deposited with other banks?

Ans. About twenty-five per cent.

No. 27. About twenty-five per cent. of what?

Ans. Of all the deposits.

Re-examined.

Questioned by CARICO:

No. 1. You stated in answer to a question that your correspondent in New York purchased the bonds required to become a depository of the United States Government and you paid as deposits were made by the Government. Now I will ask you is it or not true that your bank borrowed the money in New York with which to purchase the bonds and paid interest on the money so borrowed until it was paid back to that correspondent?

Ans. Yes, sir.

No. 2. You stated that you then bought two hundred thousand dollars of bonds, which amount was required for the bank to be made a depository. I will ask you what the bank had to pay for those bonds.

Ans. My recollection is that it had to pay one twenty-four and a fraction.

69 Re cross-examined.

Question by ATCHISON:

No. 1. How much has your bank charged off on these bonds outside of the earnings?

Ans. I think they are down to about one twelve now.

No. 2. If your capital stock is one hundred and twenty-five thousand dollars, and if you have two hundred and thirty-one thousand dollars invested in Government bonds, and if you have only about twenty-eight thousand dollars of circulation, and if you have about two hundred thousand dollars of deposits other than Government deposits, and about two hundred thousand dollars of Government deposits, and if you retain twenty-five per cent. of the deposits, which would make fifty thousand dollars, and do not lend out the two hundred thousand dollars of Government deposits,

where do you get the money to make loans to the amount of two hundred and twenty-five thousand dollars?

Ans. One hundred and twenty-five thousand dollars capital and thirty thousand dollars surplus, and twenty-eight thousand dollars of circulation, fifteen per cent. of two hundred thousand dollars, making a total of one hundred and seventy thousand dollars, which gave us a total of three hundred and fifty-three thousand dollars, fifty thousand dollars on hand, twenty-five per cent., still left three hundred thousand dollars to loan out.

No. 3. That includes the Government deposits to make that, does it?

Ans. No, sir. One hundred and twenty five thousand
70 dollars capital, thirty-thousand dollars surplus, twenty-eight thousand dollars circulation, and fifteen per cent. of the other than Government deposits make one hundred and seventy thousand dollars, a total of three hundred and fifty-three thousand dollars, with fifty thousand dollars off and the twenty-five per cent.

No. 4. According to your figures, then, you should deduct the cost of your bonds from your three hundred and some odd thousand dollars?

Ans. Yes, sir; deduct that, then, and still we have more than one hundred and fifty thousand dollars to loan out.

No. 5. Your Government bonds at par cost two hundred and thirty thousand dollars, did they not?

Ans. At par they cost two hundred and thirty-one thousand dollars.

No. 6. If you deduct two hundred and thirty-one thousand dollars from three hundred and fifty-three thousand dollars would that leave two hundred and twenty-five thousand dollars to lend out?

Ans. We don't lend out the two hundred thousand dollars. You are making the calculation outside of the two hundred thousand dollars altogether. If you add that in that would give me five hundred thousand dollars.

No. 7. Are you not mistaken in saying the bank does not lend the two hundred thousand dollars that it is allowed to keep on hand by reason of being a depository holding two hundred thousand dollars of Government bonds?

Ans. No, sir; I think not.

71 Reexamined.

Question by Judge BROWN, att'y for Owensboro National Bank:

No. 1. What do you mean in your answer to a question by charge off?

Ans. The depreciation in the value of the bonds.

Question by ATCHISON:

No. 1. When you charge off, say, five or ten per cent., the bonds having cost you that much more, you make it up by applying the

amount of the earnings of the bank equal to the amount charged off, do you not?

Ans. Yes, sir.

By consent of the parties the signature is waived.

Also the deposition of W. E. PARRISH, taken at the same time and place and for the purposes mentioned in the caption. Witness, being first duly sworn, deposes and says:

Question by Judge BROWN, att'y for Owensboro National Bank:

No. 1. State your age, residence, and occupation.

Ans. I am forty-six years of age; reside in Owensboro, Kentucky; occupation, book-seller and seller of stationary.

No. 2. How long have you resided in Owensboro?

Ans. Since March, 1865.

No. 3. Are you generally familiar with the value of real estate in Owensboro?

Ans. Well, I believe I have a pretty fair knowledge of the value of real estate; I have a general idea of the value of real estate.

No. 4. Are you generally familiar with the value at which
72 the county and State assessors have valued real estate for purposes of taxation in the years past in this city?

Ans. Yes, sir; I think I have a very good idea on that subject.

No. 5. State, then, at what percentage of the market value, the fair value of real estate, in this city it has been assessed for purposes of taxation by the city, county, and State for the last ten years past.

Ans. Well, of course there has been a disposition to bring real estate up to the cash value. To my mind that seems to be almost a possibility; but I think the custom has made the law for us, and my judgment is from two-thirds to three-fourths, according to the property. I think you take the smaller property in our city and it is probably higher than the best property. I think a man with one-thousand-dollar property pays more in proportion than a business man with five or six thousand dollars. Then, if I understand you, it has been the custom for some time to fix the value of business property at about two-thirds and smaller property at about three-fourths of its real value. I don't know that it has been the custom in that way. The officers endeavor always, of course, to get the property up as high as they can, and it seems, on the other hand, they try to keep it down as low as possible. That is just my judgment; that you will find the smaller property is given in at about seventy-five per cent. and the business property, Main and Frederica Street property, you won't find it to be over sixty-six and two-thirds.

The cash value of property is a hard thing to get at, because
73 if I have a piece of property it may be worth more to me than to another. A man may pay a fancy price for a piece of property, but it is pretty well understood among the people that the property is not listed at what it would bring.

No. 6. How about the assessments of real estate in this city for the years 1893 and 1894?

Ans. Do you mean to get at the time I was supervisor? I don't know what year it was that I was supervisor; possibly it was 1892 that I was supervisor and with me was Mr. Baer and Dr. Hickman, the mayor. I think it was in 1892. We, of course, would never put value together on property when we could locate every piece of property in town almost, and our value would go right along together; there was but very little difference. We had between two hundred and fifty thousand and three hundred thousand dollars raises that year. In fact there was more raises on property that year than ever before or since.

No. 7. Then you spoke in your last answer for the assessment of 1892, when you were one of the supervisors?

Ans. Yes, sir.

No. 8. Well, in that year, what proportion of the real value of the real estate was it assessed?

Ans. That was about what it was figured at.

No. 9. After your work had been finished or before?

Ans. After the work had been finished. Since that time they have endeavored to bring about a new order of things by taking the valuation of ground per foot, with the improvements valued at so much.

74 No. 10. Well, how have they assessed it under that form?

Ans. There has been some increase. There have been some raises every year.

No. 11. You got property in on three-fourths valuation is above the increase point, and they got them up then to that point; but they have not gone beyond the three-fourths valuation?

Ans. No, sir; not in my judgment.

No. 12. Well, Mr. Parrish, how have the assessments been made upon personal property in these years?

Ans. Mercantile stock?

No. 13. All personal property, monies, etc.

Ans. Stocks are one of the hardest things in the world to get at the value of. What would either one of you know of the value of certain stock? Take, for instance, Wile's clothing stock; take any business man's stock. My impression is this about stocks, you have to take into consideration the decrease in value of the goods and the unsalibility of the goods. There is a great many things that enter into that. Of course, when you go to put stocks up and close them out they don't bring twenty-five cents on the dollar, sometimes, of the cost. I will say from fifty to seventy five per cent. on stocks. I think some stocks are lower in proportion than others.

No. *13*. How about money, notes, and other personal property?

Ans. Well, I have no other knowledge, except when I served on the supervisor's board. There is but very little money given in. Household goods, I believe they are allowed two hundree and fifty dollars on that. My impression is that they are given in

75 very low.

No. 14. Well, at about what percentage of the real value would you say?

Ans. I can't fix a per cent.

Question by Mr. MILLER:

No. 1. Do you know anything about the valuation that is placed on real estate in Daviess county outside of the city of Owensboro for taxation?

Ans. No, sir; I do not.

Cross-examined.

Question by Judge ATCHISON, att'y for the city:

No. 1. Which, in your opinion, would yield a man the greater income, net, on the investment of ten thousand dollars, in a bank in the city of Owensboro, where the bank pays the tax, or an investment of ten thousand dollars in the average real estate in the city of Owensboro, where the owner pays the taxes, insurance, repairs, etc.?

Ans. Well, I think this: Of course that is a general question in regard to real estate. Of course you consider the increase value in property and I think it would be pretty near an equal thing, and with an advance in property possibly the real estate would be the best. I cannot tell exactly about that.

By consent of the parties the signature to the foregoing deposition is waived.

STATE OF KENTUCKY, }
County of Daviess, } *sct:*

76 I, L. O. Miles, examiner for Daviess county, certify that the foregoing depositions of Herman Naunin and W. E. Parrish were taken before me at the time and place stated in the caption; that said witnesses were duly sworn before giving them; that they were written by me in their presence, and that by consent of the parties the signatures thereto were waived. The plaintiffs were present by their attorneys and the defendants were present by their attorney.

Given under my hand this January 2nd, 1895.

L. O. MILES, *Ex. D. C.*

Sixty-third Semi-annual Statement of the Deposit Bank of Owensboro, Ky., at the Close of Business December 30th, 1893.

Resources:

Loans and discounts	$563,031.10
Banking-house	11,000.00
Cash on hand and due from banks	154,000.00
	$728,046.56

Liabilities:

	Capital stock	$250,000.00
	Surplus fund	50,000.00
	Undivided profits	1,026.64
	Fund for taxes	6,584.39
	Dividends unpaid	649.50
77	Dividend (N-. 63), 5 per cent	12,500.00
	Deposits	407,286.03
		$728,046.00

E. G. BUCKNER, *Cashier.*

Subscribed and sworn to before me this 30th day of December, 1893.

GUS T. BRANNON,
N. P., D. C.

EXHIBITS.

Statement, Dec. 31, 1892.

Resources:

Loans and discounts	$581,736.60
Banking-house	11,000.00
Cash on hand and due from banks	172,610.13
	$765,346.73

Liabilities:

Capital stock	$250,000.00
Surplus fund	50,000.00
Undivided profits	849.95
Bills rediscounted	21,000.00
Fund for taxes	2,000.00
Dividends unpaid	1,474.50
Dividend (No. 61), 5 per cent	12,000.00
Deposits	427,522.28
	765,346.73

E. G. BUCKNER, *Cashier.*

The deposition of J. P. Allison, taken pursuant to notice
78 -with attached at the law office of Sweeney, Ellis & Sweeney, in the city of Owensboro, Ky., on the 7th day of December, 1894, to be read as evidence on behalf of the plaintiffs in the above-mentioned actions, now pending in the Daviess circuit court.

The witness, being first duly sworn, deposes as follows:

Examined by JAS. J. SWEENEY:

No. 1. State your age, residence, and occupation and whether or not you have at any time been assessor for the city of Owensboro or the county of Daviess. If so, when, and for what years?

A. My age is 42 years; occupation, a cooper; my present occupation is deputy assessor; residence, Owensboro, Ky. I have been assessor for the city of Owensboro three times, 1890, 1892, and 1893 for the city, and 1890, '91, '93, '94 for the State. I misses 1892, year before last.

No. 12. State whether or not you are familiar with the values of property in the city of Owensboro and with the manner of listing it for taxation by the owners thereof in the year 1893 for the city.

A. Yes; I am.

No. 3. Then state how it was assessed.

A. It was assessed different in that year to what it is this year. The lot and improvement was assessed as one; they were not separate; this present year they are separate.

No. 4. State how the property was assessed with reference to its fair cash value at a voluntary sale, all kinds of property in the city of Owensboro.

79 A. It would be conjecture a good deal as to that. If you would say to go into the intangible and what I think should be assessed, it would change my estimate, for I know a great many men, who are reputed to be wealthy, who say they haven't a dollar in the world, when I believe they have. I think the real estate is assessed somewhere between 60 % and 70 % to the dollar. I think the mercantile business in Owensboro is not assessed over 40 %, and notes, moneys, and mortgages, &c., I doubt very much whether they are assessed at 25 % or not, but that last part is conjecture. As to the real estate and merchandise, I should think it would be reduced to a very small fraction above 60 %.

No. 5. Were you in attendance upon the board of supervisors of the city for the year 1893?

A. I was.

No. 6. State whether or not they made any raises of the property as assessed by the citizens or by you as assessor.

A. They did.

No. 7. Then state whether or not any property was raised to its fair cash value at a voluntary sale.

A. I never thought so. I don't think there is a piece of property that I ever assessed at Owensboro that was assessed at its fair cash value. I have in mind one small piece that was assessed very close to what it did sell for a few days afterwards, but that was an exception to the rule.

No. 8. State how taxes in the county for these years were. State with reference to their fair cash value at a voluntary sale.

A. I think most of the farms I deal with belong to men in the city, and I don't think the assessment will come to 60%.

No. 9. Do you know the rule adopted by the board of
80 supervisors of the city of Owensboro for 1893 in assessing property for taxation?

A. All the boards that I have been before have assessed a three-fourths valuation—75 %—as a good assessment.

No. 10. What do you mean by a three-fourths valuation?

A. As to what the property is really worth or what it would bring at fair cash sale.

No. 11. State what boards you have waited on.

A. I have been before three for the city and three for the county. I will be before the next board if I live.

Examination by attorney for Owensboro National Bank:

No. 1. In making these assessments of the property of citizens of Owensboro, what, if any, allowance or exemption have you made of property or other things from taxation at all?

A. There is $250 allowed by the constitution to any head of a family or person with a family of any personal property that he may have; if he has less than $250, I exempt all of it. It may be in money, horses, or cattle.

No. 2. Then in the city of Owensboro assessments as to the heads of families, housekeepers are allowed $250 for exemptions?

A. Provided he has that much personal property.

No. 3. That has been the invariable rule with you?

A. Yes, sir.

Cross-examined by J. D. ATCHISON, attorney for the City of Owensboro:

No. 1. What experience have you had in buying and selling real estate in the city of Owensboro or Daviess county?

81 A. I have sold two houses and lots, one of them a good many years ago. I have sold one house and lot since I have been assessor.

No. 2. What experience have you had in buying and selling personal property in the city of Owensboro and Daviess county since you have been assessor?

A. I don't know of any; I have bought a good deal of personal property, but have generally worn it out.

No. 3. It is a fact, is it not, that the Deposit Bank of Owensboro and the Owensboro savings bank own large buildings, a part of which is used for banking purposes?

A. Yes, and one other bank—the First national.

No. 4. At what per cent. of the fair market value at a voluntary sale have those banks listed their banking-houses and buildings since you have been assessor; those two banks?

A. This last year, if I am not very much mistaken, the Deposit bank changed its assessment. Before that I should not think that their banking-house was assessed at over 65 % of its value. The Owensboro savings bank was a better assessment. I take into consideration that the Owensboro savings bank could not be used for anything but a bank on account of the lot being so narrow, and I think its assessment would probably be 75 %. This year the Deposit bank would run over 65 %; I think they increased their assessment $3,000; I will not state that positively.

No. 6. There were certain oaths required for parties listing for taxation, were there not?

A. Yes, sir.

No. 7. In making assessments is it your custom to have
82 those oaths administered to the parties?

A. There is one oath here on the face that is administered before giving the assessment. After the list is given, when the time comes to affix the signature, I usually call attention to the second oath, and say, "This is what we call after taking; it is where you swear you have done what you swore you would do." Sometimes I ask a man if he is familiar with the oath, and if he says yes I ask him to subscribe to it. Sometimes I quote it verbatim, asking him to swear that he will make perfect and true answers to such questions as may be asked him concerning his taxable property, or that of others in his possession or about to be listed by you for him.

No. 8. Is it not true that most of the real estate sold in Owensboro is not sold for cash?

A. Yes, sir; it is true that it is not sold for cash.

No. 9. Is it not true that where real estate is sold on time the property is assessed and the holder of the notes given for the purchase-money is required to assess them also?

A. Yes, sir; that is true.

No. 10. Do you mean to be understood as giving any definite, fixed answer as to what per cent. of the intangible property is assessed?

A. That is a mere conjecture. I would not like to be understood as swearing to something I have no means of arriving at a knowledge of; my answer to that is based upon the fact that I go to men of reputed wealth, and they do not give me a single cent for taxation under the head of moneys, notes, etc.

No. 11. Have you such information as will enable you to
83 state the respective net incomes that will be derived from $5,000 worth of average real estate in the city of Owensboro and $5,000 worth of bank stock in one of the plaintiff banks?

A. No, sir; I couldn't answer that question. I don't know what the banks pay on their stock.

No. 12. Suppose the banks pay a semi-annual dividend of 5%, then what would you say of their relative incomes from the two investments?

A. I think the bank stock would be the best investment at 10% net. There is some real estate that will yield more than that in Owensboro, but there is some that will yield less.

No. 13. What would you estimate, if you have such information as will enable you to estimate at all, the average net income of $5,000 worth of average real estate in the city of Owensboro? By which I mean the income after deducting the insurance, taxes, and repairs.

A. I couldn't answer that question on the spur of the moment. There are two classes of real estate in this town; one pays double that of the other, if a man is able to collect his rents—that is, a lot of cheap tenement-houses is the best paying investment. You take $5,000 and invest in one residence and rent it out, for instance, as Mr. McJohnston has on Fourth street, and it don't pay a very large

per cent. I am aequainted with his rents and also somewhat of the cost of his buildings; but you get a cheap lot of houses and they pay a very large per cent. if they collect their rents.

Re-examined by J. J. SWEENEY, for plaintiffs:

84 No. 1. You have stated heretofore that you administered an oath and explained how you administered this oath. I will get you to state how that oath is regarded by the parties making the same.

A. I have had some men to regard it as sacred, as they would have regarded it if taken in the court-house before an official, while others make light of it and say, "O, we understand that." I had one old gentleman to say that he looked upon that oath as the oath taken during the war; that it was taken with a grain of salt. That was his answer.

Signature waived.

Also the deposition of SIM MULLICAN, taken at the same time and place and for the same purpose as mentioned in the caption. Witness, being first duly sworn, deposed as follows:

Examined by J. C. WEIR, attorney for Deposit Bank:

No. 1. What is your occupation?

A. I am the present sheriff of the county.

No. 2. How long have you been sheriff of Daviess county?

A. It will have been two years the first day of January.

No. 3. Are you familiar with the valuation of property in Daviess county?

A. No, sir; only in portions of the county.

No. 4. Are you familiar with the value of property as given in for taxation?

A. No, sir; I cannot say that I am, to take the county over.

No. 5. Are you familiar with any parts of the county?

A. Yes, sir.

85 No. 6. I will get you to state at about what proportion of the actual cash value property is listed for taxation in Daviess county.

A. I cannot give any estimate at all of the valuation of property in the city. When you get into the country I can give you some idea about farming *the* portion of it.

No. 7. The fair cash value at a voluntary sale?

A. I can tell you what I think about it. I think when you get around in the neighborhood of Knottsville when those fellows assess at any price they assess at valuation, but around Owensboro, the land in five or six or eight miles of Owensboro, in certain directions, they assess it at not over half what it would bring, not over 50 %. Understand me, I look upon land selling at three, four, or five years, drawing 6% interest, as cash.

No. 8. Do you own property in the city?

A. Yes, sir.

No. 9. Do you know what per cent. said property is assessed?

A. No, sir.

No. 10. What is your best information?

A. I couldn't give the remotest idea; I don't know what it is worth.

No. 11. At about what per cent. do you assess your own?

A. Three-fourths.

No. 12. We understand you to say, however, that land six or eight miles from Owensboro that they usually assess it at about 50 % of its value.

A. The way it sells they do; I am judging of that that is sold

86 No. 13. Have you ever attended any meeting of the board of supervisors of Daviess county?

A. I was a supervisor in the county myself for two years.

No. 14. At about what rate did the supervisors assess lands in the county?

A. It is an off-hand business, but when we see a man's land adjoining his assessed at so much we would say that man's land ought to be worth as much as his.

No. 15. I want to get at whether you assessed it at its full value, or two-thirds, or four-fifths.

A. When I was before the board it was under the old law, and we would require the assessment to be about 70 %. That was the old law. They had to assess at about 70 % of its value, or about two-thirds.

No. 16. What is your opinion as to the assessment of Daviess county, as to the valuation of property in it?

A. According to the new law, if I understand it right, I don't think any of them come up to it.

No. 17. What per cent. do you think they come up to?

A. Some of them about 50 %.

No. 18. What do the others?

A. I don't know the value of it.

No. 19. Do you know of anybody who assesses his property at its full value?

A. Indeed I do not. I don't suppose there is a man in Daviess county who would sell a horse, or hog, or cow, or a foot of land at what he assesses it at; I am confident of that.

87 Cross-examined by J. D. ATCHISON, attorney for defendants:

No. 1. You say you regard a sale at four or five or six years with 6 % interest as equivalent to cash?

A. Yes, sir.

No. 2. You mean to say by that that a man can get as much for land and get it in cash *if* he can if he sells it in that way?

A. I don't know about that. I couldn't say so. I presume if a man wanted to buy a certain tract of land and had the cash he would pay it as quick as those who buy on three or four or five years.

No. 3. The test of value is the price that a man can get in cash

for his land when he sells it of his own accord. Now, then, take the farms within five or six miles of Owensboro and suppose that each owner wanted to sell it within the next week for cash; take the price he could get under such a sale as that, what per cent. would the average assessment be of such a price?

A. That is rather a complicated question at this time, as everybody says money is scarce and hard to get and they cannot get the money. There are few men in this country who are able to pay the cash down for land at most any price. These men who buy at three or four years and pay 6 % interest, I don't suppose they could buy at all if the man required the cash of *him*, because they haven't got it. There are many instances where men will come to this county with money in their pockets and would rather pay cash than to buy on time, and there are men in this county I have heard say they had rather sell the land on time and get the per cent. than to have it all cash. They don't want the money, but want the interest on it.

88 No. 4. Is it not true that very few farms within six miles of Owensboro could be sold within the next thirty days for cash at anything like the value at which they sell on time?

A. No, sir; I reckon not. I would say not.

No. 5. Suppose there are twenty farms lying within that territory and that they are all to be sold voluntarily for cash within the next thirty days, how much more do you think could be realized for them, or what per cent. more, than the prices at which they are assessed?

A. I don't know what per cent. more; they would sell for more. There is not a farm assessed within five miles of Owensboro that would bring 25 % more for cash than what they are assessed for, and most of them 50 %.

Signature waived.

E. G. BUCKNER.

Also the deposition of E. G. Buckner, taken at the same time and place and for the same purpose as stated in the caption.

Witness, being first duly sworn, deposed as follows:

Examined by J. J. SWEENEY, for plaintiffs:

No. 1. State your age, residence, and occupation.

A. Age, 44 years; residence, Owensboro, Ky.; occupation, cashier of the Deposit Bank of Owensboro, Ky.

No. 2. In what were you engaged in 1892, '3, & '94?

A. Cashier of the Deposit bank.

No. 3. State whether or not as cashier of the Deposit bank you made up and sent to the auditor of the State of Kentucky

89 the statement as required by law.

A. I did.

No. 4. If so, state what that statement showed for the years 1893 and 1894.

A. The statements were called for during those years. They

were not called for at the usual time. We did make them a statement in January and July of each one of those years.

No. 5. Give the January statement only.

A. We reported for December 31st, 1892, for taxation, $250,000 capital stock and $50,000 surplus; undivided profits, $849.95. Then we were allowed a credit for the real estate at that time of $8,000. December 31, 1893, we reported at that time $250,000 capital stock, $50,000 surplus, and 91,026.64 undivided profits, and were allowed a credit for our real estate that had been assessed to the assessor here in the county for said purpose, 911,000.

No. 6. Were the statements you made to the auditor, as required by law, the full par value of the capital stock and the surplus and undivided profits?

A. It was.

No. 7. Do you know the real estate in the city of Owensboro was assessed for those years in general?

A. I know it is not assessed anything like equal to what the bank stock was assessed; in other words, I know it is not assessed at its full cash value.

No. 8. At a voluntary sale you mean?

A. Yes, sir.

No. 9. With the franchise tax imposed upon the banks, how
90 would a $5,000 investment in real estate in this city compare with $5,000 of bank stock? I mean the income to be derived therefrom.

A. I couldn't answer that question intelligently. It would depend largely on what kind of investment the real estate was invested in.

No. 10. At what per cent. difference is the assessment of real estate from the assessment as to the banks in your opinion?

A. I don't think real estate in Owensboro is assessed on an average above two-thirds its cash value.

No. 11. How is personal property assessed?

A. I don't think the personal property is assessed as high as 40 % of its cash value.

No. 12. I will get you to state whether or not any bank in this city could pay 10 % dividend on the capital stock and surplus.

A. No; the earnings of none of the banks will show such a profit.

Cross-examined by J. D. ATCHISON, attorney for defendant:

No. 1. What has been the price at which Deposit Bank stock has sold during the years 1892, 1893, and 1894?

A. I am in doubt as to — high it has sold during that time, but I don't think at any time it has sold under 125, nor has it sold over 145 during that time that I am aware of just now.

No. 2. What would you say has been the average price of it during that time?

A. There have been so few sales during that time that I am unable really to give an average sale; I would say from 135 to 140, somewhere between those points.

91 No. 3. Can you state for how much your bank was assessed for 1893 and 1894?

A. For 1892 it was $292,849.90; for 1894 it was $290,026.64. This difference in the assessment is caused by the greater assessment in the year 1894 on our building, it having been raised from $8,000 to 11,000.

No. 4. Now, if the $250,000 of capital stock was sold at 135 it would bring more than that sum, would it not?

A. Yes; it would be about 10 % or 15 % more if it was all sold at that price.

No. 5. State what have been the net earnings of your bank for 1893 and 1894.

The plaintiffs reserve an exception to this question and its answer.

A. Undivided profits on June 30th, 1891, showed $7,328.87, and by reason of bad debts and failure to make the money our undivided profits are reduced to our statement of December 31, 1892. So, while we might have made a profit on the six months' business, our business really does not show the profit of the dividend.

No. 6. I will ask you if during the years 1893 and 1894 your bank has made a 10 % dividend and had something left to go to undivided profits or surplus fund.

The plaintiffs reserve an exception to this question and its answer.

A. Yes, sir; it did.

No. 7. I will ask you if you can furnish the statements
92 made for July and Janyary; January, 1893, and July, 1894.

A. Yes; I can and will.

No. 8. I will ask you to file such statements and make them a part of your deposition.

A I will.

No. 9. At what per cent. of the value of the building owned by the Deposit bank is that listed for taxation, according to your best judgement as to its cash value?

A. I think the property is worth $11,000 to $12,000. We listed it in 1893 at $8,000 and 1894 at $11,000.

No. 10. Deducting the expenses, including the taxes, insurance, repairs, etc., which is the least productive, your $12,000 invested in the building or $12,000 of your capital stock?

A. Putting our banking building at $600 a year, we would receive $1,800 a year for the property.

No. 11. Would that be the gross receipts?

A. Yes.

No. 12. What would be the net receipts, deducting every expense?

A. Of course I would have to estimate that. I think $500 would cover the expense; that would leave $1,300 according to that.

No. 13. About what gross per cent. has your bank made for the last two years?

The plaintiffs reserve an exception to this question and its answer.

A. I couldn't answer that, because I do not know.

No. 14. What would be your best estimate on it? In other
93 words, about what per cent. must you make on your capital stock before you make any net profits?

The plaintiffs reserve an exception to this question and its answer.

A. About $10,000 a year salaries and other expenses.

No. 15. So that the dividend and what surplus the bank has made, as heretofore stated, is above the expenses that you have mentioned?

A. Yes.

No. —. I will ask you to state the comparative net income, according to your best judgement, of an investment of $10,000 in average real estate in Owensboro, and the net increase from the same amount invested in bank stock in the city of Owensboro, say in the Deposit bank.

A. I cannot answer that; I don't know enough about the real-estate incomes to give an estimate.

No. 17. When was it that the tax collector for the city of Owensboro applied to you for the payment of taxes in controversy in this suit?

A. I don't remember; I know it was some time during this year.

Questions by attorney for Owensboro National Bank:

No. 1. You have said that the assessments in the city of Owensboro for 1893 and 1894 would not exceed two-thirds of the cash value of the real estate, and that the assessments of personal estate in the city of Owensboro would not exceed 40% of its value. How do these assessments compare with the assessments of real estate and personal estate in Daviess county and elsewhere in Kentucky as far as you know?

94 A. I don't think the assessments in Daviess county on real estate would equal 50% of their cash values.

No. 2. How is it elsewhere in the State, as far as you know?

A. I don't know.

No. 3. What about personal property?

A. I don't suppose if you take the State throughout that 25% of the personal property is listed.

No. 4. Have you or not some knowledge of these subjects from contact with people and officials and from observation?

A. I have.

Re-examination by J. J. SWEENEY, for plaintiffs:

No. 1. Since the new constitution went into effect and the attempt to collect this franchise tax from the banks what has been the sale of bank stock so far as you know as compared with the prices heretofore realized and the degree of readiness with which it sells?

A. There has been very little demand for bank stock since the passage of the new constitution, and our stock has depreciated from

155 and the price it sold at in 1890 and 1891 to the prices that I have named, and I attribute it to the new law on banking.

No. 2. You have been asked heretofore with reference to the dividends declared by the bank, on cross-examination. I will ask you to state whether or not the dividends have been due to money deposited with the bank.

A. Of course the dividends are largely earned by the use of the deposits. We, of course, could not make such dividends if we relied on our capital stock and surplus.

No. 3. Take the building owned by the Deposit bank for the year 1893, at a cost of $11,000. You have stated that it was
95 worth $11,000 or $12,000; take it at either figure and take the same amount of bank stock and say which is the better income.

A. A man can draw his own conclusions from that. We have made, according to the estimate I have given, $1,300 clear on that property, and that would be a greater per cent. than the dividends we have declared.

No. 4. Add the amount of tax proposed to be added to the bank in the shape of a franchise tax, and state how much better is the real estate invested named than the bank stock.

A. It would be greater because we would not be able to make such dividends under such taxation.

Re-examined by J. D. ATCHISON, attorney for defendants:

No. 1. You will be able to make the same dividends, less the amount of increased taxation you will have to pay, will you not?

A. That depends entirely upon the business. That is looking into the future and I am unable to answer.

Signature waived.

G. A. WILLIAMS.

Also the deposition of G. A. Williams, taken at the same time and place and for the same purpose as stated in the caption.

Witness, being first duly sworn, deposed as follows:

Examined by ELI H. BROWN, attorney for plaintiff:

No. 1. State your age, residence, and occupation.

A. I am the cashier of the Farmers' and Traders' bank; live in Owensboro, and am 50 years old.

96 No. 2. How long have you resided in the city of Owensboro?

A. I have been here 40 years, off and on. I have never lived away from here but two or three years.

No. 3. State whether or not you are familiar with the general value of real estate in this city.

A. I have a fair idea, I think.

No. 3½. Are you familiar with the mode of assessing the values of real estate in this city by the assessors of it, with reference to its real cash value?

A. No; I am not familiar with the mode of assessing property. I know how to give mine in.

No. 4. What I mean to say, do you know of the valuation for taxation that has been put upon property in this city from year to year?

A. Yes; I know a good many cases of the valuation that has been placed upon property.

No. 5. State, as far as you have known of those valuations, at what percentage of the value of real estate, fixed by a fair voluntary sale by the owner, the assessments have been made at.

A. I don't believe it would be at over 65 %.

No. 6. How has it been with reference to personal estate?

A. Stocks of merchandise I don't think are given in at more than 50 %.

Examined by J. J. SWEENEY, attorney for Deposit Bank:

No. 1. Is this true with reference to the years 1893 and 1894?

A. Yes, sir; I think it has been going on 30 or 35 years.

No. 2. How do assessments of property in the city of Owens-
97 boro and the county of Daviess compare with the rest of the State, if you know?

A. I don't know anything about that.

No. 3. How does the city compare with the county?

A. I couldn't tell you anything about the county.

No. 4. State whether or not your bank rendered any statement *of* the auditor of the State of Kentucky for the years 1893 and 1894 for taxation, as required under the new law.

A. Of course we were notified to do that; we had to do that.

No. 5. Do you keep copies of such statements furnished by you to the auditor?

A. Yes, sir; I have a copy of it.

No. 6. I will get you to file it and make it a part of your deposition, the statement made on the 31st of December, 1892, and the 31st of December, 1893.

A. I will.

No. 7. At what value were the stock and surplus of your bank given in?

A. The value of the capital stock I think was placed at 100,100?

No. 8. Did you give it in at its full value?

A. Certainly.

No. 9. I will get you to state, if you can, what — the relative difference, if any, between the income of $5,000 worth of real estate in the city of Owensboro and $5,000 worth of bank stock in the city of Owensboro, Ky.

A. That depends on what rents a man might get from his
98 real estate and what business the bank might have. I don't know how to answer that question at all. I reckon about 7% would be a fair answer to it. If a man can get 7% out of his real estate he is doing well. If a man buys $5,000 worth of bank stock it depends upon what it would cost him as to what interest he might get from it.

No. 10. I will ask you if it is not a fact that real-estate investments in this town yield more than 10% net on an average.

A. No; I should think not. It depends on what a man pays for it.

No. 11. State whether or not a bank could earn 10% dividend on its capital stock and surplus out of the earnings.

A. No; the question might arise as to what the surplus might amount to. They couldn't begin to do it.

Cross-examined by J. D. ATCHISON, attorney for defendants:

No. 1. What has been the net earnings of your bank in per cent. for the years 1893 and 1894?

A. It has been about 8%.

No. 2. What dividends have you paid?

A. The last year it was 4% semi-annual; the year before we paid 5% semi-annual dividend.

No. 3. What has your bank stock been selling at during 1893 and 1894?

A. The best rate I know of is $1.20.

No. 4. What was your bank assessed for for the years 1893 and 1894?

A. I am not certain; I think it was about
99 $115,000 capital stock and surplus; maybe $117,000.

No. 5. Have you ever owned any real estate in Owensboro that you have rented out?

A. Yes, sir.

No. 6. What character of real estate was it?

A. A house and lot on Walnut street.

No. 7. Was it a desirable house and lot?

A. Yes, sir; in a desirable location.

No. 8. What did your property cost you?

A. That property cost me $5,800.

No. 9. What was your net income from that property after paying the taxes, insurance, and repairs?

A. About $225 a year. A part of it never came in, too.

No. 10. Now, I will ask you a question on general average. Take the average real estate held for investment in Owensboro and say what would be the relative net income if you compare $10,000 of such average real estate with $10,000 of bank stock.

A. I don't know how about real estate. I shouldn't think it would be over 6% on the real estate.

No. 11. What would it be on the bank stock? In other words, what has been the average dividends of the banks in Owensboro for the last two years?

A. I don't know that.

No. 12. What has been the average dividend paid by your bank?

A. We paid 10% for 1893, and we have paid 4% for 1894. The other dividend has not come yet.

100 No. 13. When was it Simmons, tax collector for the city, called on you for taxes due the city from your bank?

A. I couldn't tell you now; some time during the summer. I think it was in August or September.

Signature waived.

JAMES H. PARRISH.

Also the deposition of James H. Parrish, taken at the same time and place and for the same purpose as stated in the caption.

Examined by J. J. SWEENEY, attorney for plaintiffs:

No. 1. State your age, residence, and occupation, and how long you have been so engaged.

A. My age is 39 years; residence, Owensboro. I have been cashier of the Owensboro savings bank since 1877.

No. 2. State whether or not you, as cashier of the Owensboro savings bank, made statements to the auditor of the State of Kentucky for the purpose of taxation for the years 1894 and 1894. If so, state the property that you gave him each year for assessment.

A. I did make statements, and I gave him the capital stock at $75,000; surplus fund, $7,500 for 1892, and $8,000 for 1893, less the real estate that we owned previously assessed. Undivided profits for 1892, $685.42. I swore to the 1892 statement in March, 1893.

No. 3. Does this statement as made by you to the auditor represent the par value of the surplus and capital stock and un-
101 divided profits?

A. Yes, sir; it does.

No. 4. Are you familiar with the values of real estate in the city of Owensboro and of personal property?

A. Yes, sir.

No. 5. Can you state how real estate is listed for taxation for State purposes in the years 1893 and 1894? I mean to ask what per cent. of their fair cash value at a voluntary sale in the assessment made at.

A. To the best of my knowledge 60% to 65% for real estate.

No. 6. How with reference to personal property?

A. I don't believe personal property pays 25%.

Examined by attorney for Owensboro National Bank:

No. 1. If you have any knowledge of the rate of assessments in the county or elsewhere in the State, how do they compare with the assessments in Owensboro of real estate and of personal property?

A. I have no knowledge except hearsay. My information is that property in Daviess county is assessed at about the same as city property. I have knowledge with having talked with many different land-owners in the county, and my judgment would be as to the general subject that they do not pay more than two-thirds on real estate nor more than 25% on the personalty.

No. 2. Do you know whether it is true that intangible property, such as notes, money, bonds, and other property, escapes taxation entirely?

A. I am satisfied it does, and that is why I place the basis
102 on personal property so low, striking the average and taking that into consideration.

No. 3. I will get you to state whether or not in view of your vocation you have somewhat extraordinary facilities for information on that subject.

A. I think I have by talking with many people about finances.

Cross-examined by J. D. ATCHISON, attorney for defendants:

No. 1. What has been the market value of stock in your bank for 1893 and 1894?

A. Par.

No. 2. Hasn't it been worth a premium?

A. It has not sold for a premium except in one instance, and then at $1.10.

No. 3. Was that in 1893 or 1894?

A. That was in 1894. In 1893 the stock that changed hands changed at par. Let me correct that; in 1894 a block of stock changed hands at par.

No. 4. What dividends has your bank earned and paid for the years 1893 and 1894?

A. Invariably 10% for every year since its existence.

No. 5. Is it true that during the years 1893 and 1894 it made something above the dividend to go to the surplus fund? If so, about how much?

A. For all questionable debts we paid nothing over.

No. 6. Which is the better investment in the city of Owensboro for an income—real estate or bank stock?

A. Bank stock in the past has been, but for the year 1894
103 the people prefer real estate and have proven it by their investing in real estate in preference to bank stock.

No. 7. State as near as you can the time that Simmons, the tax collector, demanded the taxes that your bank is seeking to enjoin in this lawsuit.

A. August 23, 1893.

No. 8. If the notice for the tax in 1893 was in writing and you have it, either file it as a part of your deposition or leave it with the examiner and let him transcribe it.

A. It is as follows:

OWENSBORO, KY., *August* 23, 1893.

Owensboro Savings Bank, Owensboro, Ky.:

You are hereby notified that the State board of valuation and assessment has assessed your franchise for the current year at a valuation of $71,185.45, on which there is due the city of Owensboro for the current year, on the levy of $1.50, the sum of $1,067.78 taxes. By the terms of the statute the same is now due and demand for same is hereby made.

Respectfully,

A. M. C. SIMMONS,
Tax Collector.

Re-examined by J. J. SWEENEY, attorney for plaintiffs:

No. 1. How is the demand made?

A. By this written notice, served by A. M. C. Simmons, I believe. I think A. M. C. Simmons handed it to the bank in person.

Signature waived.

104 I. N. PARRISH.

Also the deposition of I. N. Parrish, taken at the same place on the 20th day of December, 1894, to be read as evidence in behalf of plaintiffs under the agreement stated in the caption.

Examined by R. A. MILLER, attorney for Citizens' Savings Bank:

No. 1. State your name, age, residence, and occupation.

A. Name, Isaac N. Parrish; age, 32 years; residence, southwestern suburbs of Owensboro, Daviess county, Ky.; occupation, cashier of the Citizens' Savings Bank of Owensboro, Ky.

No. 2. State how long you have been cashier of this bank and what your occupation was before that time and how long you had been in that business.

A. I have been cashier of the Citizens' savings bank since the 26th day of August, 1892, and preceding that I was engaged for something over a year and eight months at the same place as bookkeeper for the same bank.

No. 3. State whether or not you, as the cashier of the Citizens' savings bank, made statements to the auditor of the State of Kentucky for the purpose of taxation for the years 1893 and 1894. If so, state the property that you have given him each year for assessment.

A. I was cashier of the said bank and did make up a tax schedule for banks and trust companies for the said years, and I gave in to him upon a blank furnished by the auditor the capital stock of the bank, $117,500; surplus fund, $6,000; amount of undivided profits, $766.49, and amount of other assets, including the current
105 earnings from the first of October preceding up to December 31st of that year, $284.18, which was the gross earnings and not the net earnings of the bank for that term, makes a total of $127,107.67, upon which he allowed a deduction of $1,500 for the tangible property assessed by the assessor for State taxes and other lawful deductions of $1,500 on furniture, fixtures, etc. That statement was made up as of the close of business December 31, 1892. I think that is given for taxes of 1893. In 1894 I made up the same kind of tax schedule for the auditor, giving in the capital stock of $117,500, and surplus, $6,000, and the undivided profits, $5,925.11—I think this new blank did not require the amount of assets as the blank furnished for 1893 tax—making a total for 1894 of $129,425.11, less the amount of tangible property assessed by the assessor for State taxes and other lawful deductions, $2,080, making the total net value of franchise, as certified by the auditor, of $127,345.11.

No. 4. Do these statements, as made by you to the auditor, represent the par value of the surplus, capital stock, and undivided profits?

A. They do.

No. 5. Are you familiar with the value of real estate and personal property in the city of Owensboro?

A. Reasonably so.

No. 6. State what opportunities you have had for becoming familiar with the values of real estate in the city of Owensboro.

A. I have lived here all my life. My association with men who owned real estate and my observation of the prices it brings, as well as my experience in handling some of it, make me familiar with the values.

106 No. 7. Can you state how real estate is listed for taxation for the years 1893 and 1894? I mean to ask at what per cent. of their fair cash value at a voluntary sale is the assessment made.

A. I have made no sweeping investigation of the tax books, but such observations as I have made lead me to think that the rate per cent. of values would not exceed from 60 % to 70 %.

No. 8. How about personalty?

A. I should judge that personalty would not go above 20 % to 30 %.

No. 9. State, if you know, what valuations are placed on farming lands in Daviess county when assessed for taxation for State and county purposes—that is to say, whether they are assessed at their value, and, if not, at what per cent. of their value, in your opinion, they are assessed.

A. Such cases as I have observed and with such knowledge as I have had of the sales of land, comparing them with the assessments, I should judge that if they all run as those that I have known of they would not exceed 60 %.

Cross-examined by J. D. ATCHISON, attorney for defendants:

No. 1. At what time did Simmons, city tax collector, demand of your bank the tax for 1893 claimed by the city?

A. A. M. C. Simmons, city tax collector, demanded of me the tax for 1893 August 23rd of that year, addressing me a communication as follows:

OWENSBORO, KY., *August* 23, 1893.

Citizens' Savings Bank, Owensboro, Ky.:

107 You are hereby notified that the State board of valuation and assessment has assessed your franchise for the current year at a valuation of $125,607.67, on which there is due the city of Owensboro for the current year, on the levy of $1.50, the sum of $1,884.11 taxes.

By the terms of the statute the same is now due and demand for same is hereby made.

Respectfully,

A. M. C. SIMMONS,
Tax Collector.

I don't remember whether he served this in person or by deputy or by mail.

No. 2. Have you any objection to filing that paper as a part of your deposition?

A. I have none, and file it herewith. I write my name across the back of it to identify it.

No. 3. You may now state when Simmons, tax collector for the city of Owensboro, made demand of your bank for the tax claimed for the year 1894.

A. As well as I remember, it was the 11th day of August, 1894.

No. 4. You may state whether or not at the time he demanded of you the taxes for 1894 he also again demanded of you the taxes for 1893.

A. I am not positive, but think he did.

No. 5. You may state whether for the year 1893 or for the year 1894 you received from the auditor of public accounts of the State of Kentucky notice of the assessment of the franchise tax
108 against your bank. If so, you may state the dates of each of said notices and whether they were in writing or verbal.

A. I received notice from L. C. Norman, auditor, dated June 30, 1893, and received it in due course of time by mail, a printed and written notice of the State board of valuation and assessment, who have the report of the above corporation of Citizens' Savings Bank of Owensboro, Ky., under consideration:

Have assessed the valuation of your franchise as follows:

Capital stock	$127,107.67
Less amount of tangible property assessed by the assessor for the State tax and other lawful deductions.	1,500.00
Value of franchise	$125,607.67
Tax at 42½ cents on each $100	533.83

Under the law you will have 30 days to be heard on the subject of this valuation by the board.

L. C. NORMAN, *Auditor.*

No. 6. Now, you may state as to notice for the year 1894.

A. A similar notice for the year 1894, dated June 2, 1894, was also received, giving the capital stock at $129,425.11, less the amount of tangible property assessed by the assessor for State taxes and other lawful deductions, $2,080; value of franchise, $127,345.11.

Tax at 42½ cents on each $100, $541.22.

This notice also contained this note:

"Under the law you will have 30 days to be heard on the subject of this valuation by the board.

Yours truly, L. C. NORMAN, *Auditor.*"

No. 7. Will you write your name across the back of each
109 of those papers to identify them and file them as a part of your deposition?

A. I would prefer to keep them as records, but will read to the examiner one of them in full, the only difference being, as indicated, as to dates and amounts:

STATE OF KENTUCKY:

Office of auditor of public accounts.

FRANKFORT, KY., *June* 30, 1893.

To Citizens' Savings Bank, Owensboro, Ky.:

The State board of valuation and assessment, who have had a report of the above corporation under consideration, have assessed the value of your franchise as follows:

Capital stock	$127,107.67
Less amount of tangible property assessed by assessor for State tax and other lawful deductions	1,500.00
Value of franchise	$125,607.67
Tax at 42½ cents on each $100	533.83

Under the law you will have 30 days to be heard on the subject of this valuation by the board.

Yours truly, L. C. NORMAN, *Auditor.*

No. 8. Has your bank paid the State of Kentucky the taxes mentioned in each of those papers?

A. Yes, sir.

110 No. 9. Was that payment accepted by the State in full of the taxes due the State from your bank for those years?

A. We tendered to them the full amount of our taxes under the Hewitt law, $881.25, for each year, and they refused to accept any more than the amount mentioned in the above statement from the auditor.

No. 10. Did they accept that amount?

A. They did accept that amount.

No. 11. Did you receive receipts in full for taxes of those years from the State?

A. I don't remember what form of receipt we received; we received a receipt for the money, I think. We sent drafts, and they would have to endorse them before they could get the money. I know one of those years we had to send through Fayette Hewitt, of the national bank there, and had him to make the tender for us. We first sent the check for the full amount and they sent the check back to us; then we sent the check to Fayette Hewitt's bank and got him to make a tender to the State in proper form, and we have his letter in which he returned to us the surplus. I have some communications from Hewitt in which he returned me the surplus of the money sent to him, in which he said he had made due tender to the State and that they had refused to accept anything except the amount as per the statement by the auditor.

Signature waived.

P. J. MURPHY.

111 Also the deposition of P. J. Murphy, taken at the same place on the 16th day of January, 1895, and for the same purpose as stated in the caption.

Witness, being first duly sworn, testified as follows:

Examined by REUBEN A. MILLER, attorney for plaintiff The Citizens' Savings Bank:

No. 1. State your age, residence, and occupation.

A. I am 34 years old; live in Owensboro, Ky., and am in the fire insurance business up until time to assess the city. I have been city assessor and tax collector here for years.

No. 2. Are you at present city assessor?

A. Yes, sir.

No. 3. How long has it been since you assessed the property in the city of Owensboro?

A. One year.

No. 4. When do you make your next assessment?

A. January 10, 1895.

No. 5. Are you making it now?

A. Yes, sir.

No. 6. How much of the work of the present assessment have you done at this time?

A. Very little. I commenced on Monday, the 14th.

No. 7. How long have you lived in Owensboro?

A. 34 years. I was born here.

No. 8. State whether or not you made the assessment for the city taxes for the year 1894.

A. Yes, sir; I did.

No. 9. State whether or not you are familiar with the
112 values of property in the city of Owensboro and the manner of listing it for taxation by the owners in the year 1894.

A. I think I am.

No. 10. Then state how it was assessed for that year.

A. The lots were assessed at so much a front foot, separately from the improvements.

No. 11. From your experience in the business of making assessments and from your knowledge of the values of real estate in the city of Owensboro state at what rate the real estate of the city of Owensboro was assessed, in your opinion, for the year 1894—that is to say, at what percentage of its fair cash value at a voluntary sale.

A. I don't believe that the real estate in this city was listed or ever has been listed for more than 65 or 70% of its actual value, if for that much.

No. 12. You mean to state that that was about the way it was listed for the year 1894?

A. Yes, sir; that is my opinion.

No. 13. What as to the personal property?

A. There are some classes of personal property that I believe is listed for something near two-thirds of its actual value, while I believe other classes, such as merchandise and things of that sort, that are not listed for more than half their value, and I believe there is personal property in the way of money, notes and bonds, and things of that sort that are never listed at all.

No. 14. State at what per cent. of its fair cash value, esti-
113 mated at a voluntary sale, was the real estate in the city of Owensboro assessed at for the year 1893.

A. I have assessed the city fifteen of twenty times all together, but for the year 1893 I didn't do the work; Mr. Allison did it.

No. 15. From your knowledge in general of the subject, what would you say as to the assessment for the year 1893, both as to real and personal estate?

A. I don't believe that the property for the year 1893 was listed for more than 60% of its value because of the fact that Allison's assessment doesn't show up anything like as big as mine, the same property. There was several hundred thousand dollars difference between his assessment and mine.

No. 16. Do you mean that for real or personal estate?

A. I mean that for all, both real and personal.

No. 17. Did the city have a board of supervisors for the year 1894?

A. Yes, sir.

No. 18. Did you attend on the sittings of this board and wait on them?

A. I did; I served as clerk of the board; that was part of my duty.

No. 19. Do you mean to put your estimate of the rate of assessment for 1894 before or after the board of supervisors had acted?

A. I mean after they acted, because they made but very little changes. The board last year didn't raise this town over
114 $100*0*,000 over and above my assessment, whereas the year before they raised it $300,00– and some *odd* dollars.

Cross-examined by J. D. ATCHISON, attorney for defendants:

No. 1. Is the assessment of property of equal value uniform, or is there a considerable variance in it?

A. There are some variances, but, of course, the object is always to get it as uniform as possible.

No. 2. You may state whether the business houses and the finer residences in the town are listed at as high a per cent. of their cash value as the smaller pieces of property.

A. That is an easy question; they are not.

No. 3. About what per cent. of difference would you say there is in the assessment of those two kinds of property?

A. I hardly know what per cent., but there is considerable difference.

No. 4. You may give your best judgment on the subject.

A. I don't believe that property of that class—of the most valu-

able property—residences and business houses, are listed for more than 50% or 60% of their values, while property of less value, such as small residences, are listed for 75%. I don't mean to say by that, however, that either of them was listed at that particular rate, but I mean to discriminate to make the difference between the values of the listing.

No. 5. Are the different classes of personal property listed somewhat uniformly, or do they vary? For instance, are stocks of merchandise and things of that character listed as high as other classes of personal property, by which I mean visible personal property?

115 A. I think not.

No. 6. What per cent. difference would you think there is in that sort of assessment?

A. There is at least 25% difference, for I don't believe that merchandise is assessed for more than half of its actual value, as a rule, while I believe that personal property, such as horses, wagons, cattle, and so on, is listed at something near 75% of its value. For instance, now, horses today that men are giving in to me at $75 apiece, I don't believe they could cash them for much more than that.

No. 7. How would the assessment of money, debts due, notes, and things of that kind of property, consisting of that class, how does that compare with other personal property?

A. I am not competent to say, from the fact I don't know what a man has. That class of property is invisible and is left entirely with them as to what amount of money, notes, bonds, etc., they have, but I will say that there is very little of that class of property assessed at all, where I believe there ought to be a great deal of it.

No. 8. From the best information you have on the subject, do you believe that the class of property last referred to in the city of Owensboro is assessed at more than 25% of its actual value?

A. No, sir; I don't.

Signature waived.

116 STATE OF KENTUCKY, }
County of Daviess. }

I, R. P. Miller, official stenographer of the sixth judicial district, certify that the foregoing depositions of J. P. Allison, Sim Mullican, E. O. Buckner, G. A. Williams, Jas. H. Parrish and Isaac N. Parrish, and J. P. Murphy were taken before me at the times and place stated in the caption; that said witnesses were duly sworn before giving them; that same were written by me in their presence in stenographic notes and by me accurately and fully transcribed into typewritten matter; that by consent of the parties the signatures of witnesses were waived. The plaintiffs and defendants were present by attorneys only.

Given under my hand this 9th day of January, 1895.

R. P. MILLER,
Official Stenographer.

OWENSBORO, *Aug.* 23*rd*, 1893.

Citizens' Savings Bank, Owensboro, Ky.:

You are hereby notified that the State board of valuation and assessment has assessed your franchise for the current year at a valuation of $125,607.67, on which there is due the city of Owensboro for the current year, on the levy of $1.50, the sum of $1,884.11 taxes.

By the terms of the statute the same is now due and demand for same is hereby made.

Respectfully,

A. M. C. SIMMONS,
Tax Collector.

117 The plaintiffs, The Deposit Bank of Owensboro, The Farmers' and Traders' Bank of Owensboro, The Owensboro Savings Bank, The Citizens' Savings Bank of Owensboro, and The Owensboro National Bank, will each take notice that between the hours of 8 a. m. and 5 p. m., at the boarding-house of Mrs. Berkhardt, at the corner of Fourth and Crittenden streets, in the city of Owensboro, Ky., on Monday, December 17, 1894, the defendant in each of the above-styled actions will take depositions to be read in its behalf on the trial of the motion to dissolve the injunctions and on the trial of this action in the foregoing-entitled action.

CITY OF OWENSBORO,
A. M. C. SIMMONS,
By J. D. ATCHISON, *Att'y.*

Daviess Circuit Court.

THE DEPOSIT BANK OF OWENSBORO, ETC., Plaintiffs,
vs.
THE CITY OF OWENSBORO, ETC., Defendants.
} Deposition for Defendant.

The deposition of A. M. C. Simmons, taken at the boarding-house of of Mrs. Berkhardt, at the corner of Crittenden and Fourth streets, in the city of Owensboro, Ky., to be read as evidence on behalf of defendant in actions pending in the Daviess circuit court, in which The Deposit Bank of Owensboro is plaintiff and The City of Owensboro is defendant, and in Farmers' and Traders' Bank *v.* Same, Owensboro National Bank *v.* Same, Owensboro Savings Bank *v.* Same, and Citizens' Savings Bank *v.* Same.

118 The witness, being first duly sworn, deposes and says:

Direct examination by defendant's attorney:

Q. State you- age, residence, and occupation.

A. Age, 73; I reside in the city of Owensboro, Ky.; I am city tax collector.

Q. How long have you been city tax collector?

A. This is my tenth year.

Q. Were you city tax collector in 1893 as well as in 1894?

A. I was.

Q. If you made any demand of the Deposit Bank of Owensboro for its taxes for the year 1893, state when that was and what you did.

A. It was in the month of August. I can't give the date. I made the demand of the president, Mr. James Weir, in his office.

Q. What amount of taxes did you demand?

A. I demanded of the Deposit bank for 1893 the sum of $5,278.68.

Q. Did you tender a statement of the taxes at the time of making the demand?

A. I did.

Q. Were the taxes paid when demanded in 1893?

A. They were not, sir.

Q. Was any demand for taxes so made of the Deposit bank in the year 1894?

A. Yes, sir.

Q. Of whom did you demand them?

A. Mr. Weir, in his office.

Q. Whom do you speak of?

119 A. Mr. James Weir, president of the bank.

Q. What amount of taxes did you demand in the year 1894?

A. I demanded $4,313.41.

Q. What papers are you using here in testifying?

A. The city tax receipts against the Deposit bank for the city of Owensboro for the years 1893, 1894.

Q. From what were said receipts made?

A. From our city tax books, handed to me by the city council.

Q. Were the demands that were made made on these receipts from which you read or not?

A. I think it was a different receipt.

Q. At what time was the demand made in 1894?

A. It was made in August.

Q. Was more than one demand made in 1894 for the taxes due for that year?

A. I don't remember that there was.

Q. When you demanded the taxes in 1894 was anything else demanded?

A. No, sir.

Q. When the demand was made in 1894 were the taxes paid?

A. No, sir.

Q. Why not?

A. Because the banks refused to pay them.

Q. Why were they not paid in 1893?

A. For the same reason, sir.

Q. State if you made any demand for the city taxes at the Farmers' and Traders' bank in the year 1893; and, if so, when.

120 A. I did, and my recollection is that it was made in August.

Q. Can you say what time in August?

A. I can't name the date.

Q. Can you state the amount of taxes you demanded in 1893 of that bank?

A. I demanded $2,088.25.
Q. Of what officer of the bank did you make the demand?
A. I made it of Mr. Williams, the cashier.
Q. What is Mr. Williams' given name?
A. George.
Q. Where was Mr. Williams at the time you made the demand?
A. He was at the bank.
Q. Did he pay the taxes?
A. He did not.
Q. Was any demand of taxes made of that bank in 1894; if so, when?
A. It was, and it was made in August; and, if I remember aright, it was made of the president, Mr. Lynch Gray. I was there two or three times, and we spoke of the taxes for 1893.
Q. What was said about the taxes of 1893 at the times you refer to?
A. Well, they just said that they intended to stand a lawsuit rather than to pay them, to see if it was legal.
Q. What amount of taxes did you demand for the year 1894 of the Farmers' & Traders' bank?
A. $1,737.24.

121 Q. Did you make any demand of taxes of the Owensboro savings bank for the year 1893; and, if so, when?
A. Yes, sir; I made the demand. I am not positive whether it was the same day or not, but I made them all during the week.
Q. During the week of what month during the year 1893?
A. The month of August, I think.
Q. Of whom did you make the demand?
A. Of Mr. Parrish.
Q. What is Mr. Parrish's given name, and what position does he hold in the bank?
A. James Parrish; and he is cashier, I think.
Q. What amount of taxes did you demand for 1893?
A. $1,283.10.
Q. If you made any demand of taxes for 1894 of that bank, of what officer did you make the demand?
A. Well, my recollection is that it was Mr. Owen, for I don't think Mr. Parrish was there. I mean W. H. Owen.
Q. Who was in charge of the bank at the time you made that demand?
A. W. H. Owen, as far as I know.
Q. Did you see any other person there in charge of the bank at that time?
A. Yes; there was some young man there. I don't remember his name.
Q. What amount of taxes did you demand for the year 1894?
A. 1,079.21.
Q. Were the taxes for either year paid by that bank?
A. No, sir.
Q. Why not?

122 A. Because they refused to pay them.

Q. I will ask you if you made any demand of the city taxes of the Owensboro national bank for the year 1893.

A. Yes, sir.

Q. Do — recollect at what time that demand was made?

A. It was made in the same month and same week and about the same date that all of them were made.

Q. What month was that?

A. It was August of last year and of this year.

Q. Of what officer of that bank did you make the demand?

A. Mr. Reno.

Q. What is Mr. Reno's given name?

A. Lawson.

Q. What relation has he to the bank?

A. My understanding is that he is cashier there, sir.

Q. I will ask you if you remember that his name is Lawson Reno.

A. Yes, sir.

Q. What amount of taxes did you demand for 1893?

A. $2,795.27.

Q. Were the taxes paid when demanded?

A. They were not.

Q. Why not?

A. Because they refused to pay them.

Q. Did you demand the taxes of that bank for the year 1893?

A. Yes, sir.

Q. Of what officer and at what time?

A. Of Mr. Reno, cashier, last August.

Q. What amount of taxes did you demand?

123 A. I demanded for that year $2,330.50.

Q. Were the taxes paid?

A. They were not.

Q. Why not?

A. Because, sir, they refused to pay them.

Q. Did you demand the taxes of the Citizens' savings bank for the year 1893?

A. Yes, sir; I did.

Q. Of what officer and when did you make that demand?

A. Of Isaac Parrish, cashier. I made the demand in August, I think.

Q. What amount of taxes did you demand in August, 1893?

A. $2,264.47.

Q. Did you demand the taxes of that bank for 1894?

A. Yes, sir.

Q. What officer did you demand them of?

A. Same officer, Mr. Parrish.

Q. What time in 1894 did you make the demand?

A. Last August, sir.

Q. State the amount you demanded.

A. $1,894.05.

Q. Were the taxes for either of those years paid?

A. They were not.

Q. Why not?
A. They refused to pay them.

124 Cross-examination by plaintiff's attorney, Mr. J. J. SWEENEY:

Q. What time in August, 1893, Mr. Simmons, was it that you made the demand of these various banks for the taxes of that year?
A. I could not give you the date, sir, but it was the latter part of August, though.
Q. I will get you to state that of the $5,278.68 demanded of the Deposit bank in 1893, in August of that year, how much of that was for interest and how much for penalty.
A. The interest, sir, was $446.60, and the penalty, $439.28.
Q. Of the sum demanded for the year 1894, how much of that was interest and how much penalty?
A. For 1894 the interest was $6.52; penalty, $391.53.
Q. Of the sum demanded of the Owensboro savings bank for the year 1893, I will get you to state how much was interest and how much penalty.
A. The interest was $108.55 and the penalty was $106.77.
Q. How much of the taxes for the year 1894 of the Owensboro savings bank were interest and how much penalty?
A. Interest, $1.66, and the penalty, $99.77.
Q. Of the taxes demanded of the Citizens' savings bank for the year 1893, to wit, $2,264.40, what part of that was interest and what part penalty?
A. Penalty, $188.41; interest, $191.55.
Q. Of the taxes demanded of the Citizens' savings bank for the year 1894, what is interest and what penalty?
A. The interest, sir, is $2.98; the penalty, $171.91.
Q. The amount demanded of the Farmers' & Traders' bank, $2,088.25, what part of that sum is penalty and what part
125 interest?
A. The penalty is $173.78; the interest, $176.67.
Q. The taxes demanded of that bank for the year 1894 being $1,737.24, what part of that sum is interest and what part penalty?
A. Interest, $2.63; penalty, $157.69.
Q. Of the sum of money demanded of the Owensboro national bank for the year 1893, and being $2,795.20, what part of that is interest and what part penalty?
A. The interest is $236.48; the penalty is $232.61.
Q. Of the sum of money demanded of the Owensboro national bank for 1894, to wit, $2,330.50, what part of that is interest and what part penalty?
A. Interest, $3.52; penalty, $211.54.
Q. The papers which you have used in giving your depositions, and which show the various sums claimed by you against these banks, from where do you get these papers?
A. We take them from our books, as given to us by the city, the different amounts assessed to these banks, and these statements are taken from the city tax books.

Q. State whether the council places in your hands a tax statement showing the person against whom the tax is levied, the amount of property, the sum to be paid on account of city revenue, railroad bonds, school tuition fund, &c.

A. The council gives me the assessment, and I make out my own books from the assessment.

Q. So simply the assessor's book is furnished you, or a copy of it, and you make these lists yourself?

126 A. Yes, sir.

Q. Were these various sums claimed against the defendant banks in this case in the assessor's book when delivered to you?

A. I am not positive about that; I think not.

Q. When were the amounts that the various sums you have claimed against these banks as taxes turned over to you for collection in the years 1893 and 1894?

A. I don't remember the exact date; for 1893 we have August 15, and for 1894 we have July 7th.

Q. When does the penalty go on all other city taxes?

A. It goes on on the first day of September each year.

Q. How much goes on at that time?

A. Two per cent.; then there is added two per cent. for each month running up to January.

Q. What interest, if any, is collected against the other tax-payers of this city?

A. There is no interest collected of a regular tax-payer; the penalty is all they pay.

Cross-examined by ELI H. BROWN, attorney for the Owensboro National Bank:

Q. Mr. Simmons, please state by what authority of the city of Owensboro you attempted to collect the taxes from these banks involved in this litigation?

A. I was made city tax collector by the authority or the council, and by their authority I attempted to collect the taxes.

Q. Did your election as city tax collector authorize you to demand this money from these banks?

127 A. I demanded it as a regularly elected tax collector for the city.

Q. Had the city assessed these amounts of taxes against these banks that you demanded?

A. I think the assessment comes from the State authority, from that paper there.

Q. So far as you know, there was no assessment against any of these banks made against them upon which you made a demand of these taxes?

A. I think not, sir.

Q. You have used in answering some questions this paper I now show you. Examine that paper and, if you will, file it and make it a part of your deposition, and say whether or not that was the

authority upon which you made the demand of these taxes in 1893 and 1894 of these banks.

A. This is my authority, supplemented by the council, who control me as their collector.

Q. Is that paper you hold in your hand an official document which belongs to your office?

A. I don't know that I can state that, Mr. Brown.

Q. Is it important that it be kept in your office?

A. Yes, sir; we keep it.

Q. Then, will you file with your deposition a true copy of your paper and mark it "assessment" for its identification?

A. Yes, sir; I will.

Q. And will you also file a copy of the one for 1894?

A. Yes, sir.

128 Q. Now you have said that those papers for 1893 and 1894 respectively, supplemented by the authority of the council, was your authority for demanding these sums of money from these banks in those two years. What was that supplemental authority of which you speak?

A. Nothing more than that I was ordered to go on and make these collections.

Q. How were you directed?

A. There was no special ordinance for it or anything of that kind; these papers were sent me, I believe, from Frankfort—anyway, they came into my hands through the mail—and I, of course, was ordered by the council to make these collections.

Q. At what time in the year 1893 and at what time in the year 1894 were you ordered by the council to make these collections, and was it done by an ordinance enacted by the council?

A. I don't know of any ordinance, sir; in 1893 we got those papers about the 16th or 17th of August, and in 1894 from the 7th to the 10th of July.

Q. If you are correct in your recollection that you got those two assessments through the mail, then it is not true, is it, that you got them from the council?

A. No, they came to me through the mail.

Q. Now, you have still not answered at what time in 1893 and at what time in 1894 the council ordered you to collect those assessments from these banks. State at what time you were so ordered by the council.

129 A. As I said before, there was no special act by the council that I remember of that went upon record ordering me to collect these assessments at all, and when we got those papers I showed them to the authorities and they ordered me to go on and make the collections.

Q. What authorities of the city did you show them to, and who were they that told you to go on and make the collections?

A. I don't remember, sir. I think the mayor and city council were aware that I got them, but I don't remember who I told, exactly, but I spoke to several about it. There was no special act

formally made commanding me to do this, but the papers were just placed in my hands and I attempted the collection.

Q. After you received that assessment from the State board of assessment for the year 1893, did you go into the city council and lay that before that council and ask their advice or instruction as to what to do with it?

A. No, sir.

Q. Did you do that with reference to the assessment of 1894, when you received it?

A. With neither of them.

Q. Has the city council at any time in either the year 1893 or 1894, when in session, by ordinance or resolution or other joint act, directed you to collect either the assessment for 1893 or 1894?

A. I don't think they did. There was no special act by the council commanding me to do this thing.

Q. Do you know, from the examinations you have made now or heretofore of the assessments of 1893 and 1894 sent to you, upon what sort of a basis or property valuation those assessments were made?

130 A. I don't.

Q. When were you elected city tax collector last?

A. In April. They elect a city tax collector in April each year.

Q. Is there a back-tax collector of this city?

A. None but myself.

Q. Well, when the city assessor's books of assessment were delivered to you in 1893 and in 1894, was there any commission or precept accompanying it to you for the collection of those taxes?

A. Nothing specially.

Q. When did you finish up your collections for the year 1893, your general collections of taxes, and make your settlement? Was that done before you were re-elected?

A. Yes, sir.

Q. Did you then get your quietus?

A. Yes, sir.

Q. Were the taxes of 1893 when, or after, the assessment books were delivered to you, charged up against you by the city government?

A. I think so.

Q. Then when you settled with the city government, before your election for 1894, were you formally discharged from your liability for 1894?

A. Yes, sir.

Q. And such is the course every year, I suppose, since you have been tax collector?

A. Yes, sir.

131 Q. Will you please file and make part of your deposition your official bonds for the years beginning in the spring of 1893 and the spring of 1894?

A. Yes, sir; I will.

Q. In your settlement with the city government for the taxes of

1893, I will ask you if you were charged up with these taxes now claimed in these suits against the several banks for the year 1893.

A. I don't know that I was; Mr. Zulauf can tell you that.

Q. Whom did you make your settlement with?

A. They appoint a committee to overlook my work.

Q. Is that settlement for the taxes of 1893 made in writing?

A. No, sir; they just examine my work. The council appoints a committee of three to make a settlement, and, for instance, if I have failed to collect taxes which they think I ought to have collected, they won't relieve me of it; they charge me up with it.

Q. And that was the case in the settlement for 1893, I suppose?

A. Each year.

Q. Your recollection is, if I understand you, that in the assessments with which you are charged, and that were embraced in your settlement for 1893, these taxes now claimed against these defendants for the year 1893 was *was* not embraced?

A. I don't know that they were; they may have charged them up to me; I don't know.

Q. How can you ascertain whether they were?

A. The city clerk can tell you whether they were.

Q. What book in possession of the city clerk will disclose whether they were or were not embraced?

132 A. Well, he keeps regular books of all the transactions, the sales I make and the taxes I collect, and all that.

Cross-examination by Mr. SWEENEY, plaintiff's attorney:

Q. I will ask you if you are not mistaken when you say there is no written statement made with you, and I will ask you if the council does not appoint a committee whose duty it is to settle with you as tax collector, and if your books are not taken as the basis, you being charged with the face of the book; then being credited by whatever sales you have made during the course of the year, the amount of money turned over, the tithes that you have failed to collect, and other delinquencies; and if it don't also show all penalties collected by you, the amount of the various penalties; and if they don't report this fact to the council, and you receive your quietus, based on this statement; and if it isn't in writing.

A. They charge me with the entire book, for all the assessments, and they credit me with all I collect, and then they credit me with all I cannot collect, and that is the way they settle with me and my sales.

Q. Is it a fact now that neither the tax book nor the assessor's book show any assessments whatever as against these defendants?

A. I don't think they do.

Q. When you come to settle, have you ever been charged or credited with these various sums claimed against these defendant banks?

133 A. I don't know that I have.

Redirect examination by defendant's counsel:

Q. Who has custody of your official bonds for the years 1893 and 1894?

A. I don't know the particular city authorities that have them. I got them and they took charge of them; that is all I know about it.

Q. Are either of them in your custody?

A. No, sir.

Q. You speak of having made demands on some valuation received from the State. I will ask you if you made out written statements of the taxes due from those statements furnished you by the State.

A. Yes, sir.

Q. And whether or not your demands were made on those statements.

A. Yes, sir.

Q. What were the nature of those statements?

A. They were made up into the different funds as other tax receipts are made.

(Signature waived.)

STATE OF KENTUCKY, } *sct:*
County of Daviess, }

I, Charles McGill, an examiner in and for the county and State aforesaid, do hereby certify that the foregoing deposition of A. M. C. Simmons was taken pursuantto notice, at the time and place and for the purpose stated in the caption; that said witness was
134 first by me duly sworn before testifying; that the questions were propounded to him by the attorneys and taken by me in shorthand, and that his answers were stated to me and taken by me in shorthand, and that the deposition was by me transcribed; that by consent of the attorneys signature was waived to said deposition; that there *was* present during the taking Hon. L. P. Little, for the defendant, and J. J. Sweeney and E. H. Brown, Esqs., attorneys representing the plaintiffs.

Given under my hand, as examiner aforesaid, this the 21st day of December, 1894.

CHAS. McGILL, *Ex. D. C.*

We, A. M. C. Simmons, principal, and Lucius P. Little, H. P. Thompkins, his sureties, hereby covenant with and bind and obligate ourselves to the City of Owensboro that the said A. L. C. Simmons shall well and faithfully — all duties required of him by law or ordinance while holding the office or position or performing the duties of collector in said city.

Witness our signatures this the April 13th, 1894.

A. M. C. SIMMONS.
J. A. FUQUA.
LUCIUS P. LITTLE.
H. P. TOMPKINS.

Attest: PHIL R. ZULAUF, *City Clerk.*

A true copy.
Attest: PHIL R. ZULAUF, *City Clerk.*

135 We, A. M. C. Simmons, as principal, and J. A. Fuqua, Lucius P. Little, and H. P. Thompkins, sureties, hereby covenant to and with the city of Owensboro, Kentucky, that the said A. M. C. Simmons shall well and truly and faithfully discharge the duties of collector of the city of Owensboro under his appointment and election as tax collector for the said city of Owensboro for the year 1893, and that he shall collect and pay over to the treasurer of said city, or other persons entitled thereto, all the taxes and assessments which have been *or* made upon the property, capital, or inhabitants of said city by the time the law requires him to do, and he shall pay over to the treasurer of said city all the taxes for previous years that may be collected by him.

A. M. C. SIMMONS.
LUCIUS P. LITTLE.
H. P. THOMPKINS.

Attest: PHIL R. ZULAUF, *City Clerk.*

A true copy.
Attest: PHIL R. ZULAUF, *City Clerk.*

Office auditor public accounts.

FRANKFORT, KY., *Aug. 15th*, 1893.

County clerk, Daviess county.

DEAR SIR: The State board of valuation and assessment have made the following assessment of franchises in the above county for 1893.

136 Please file the statement in your office and furnish copies to the various collectors of taxes.

First Nat. Bk., Owensboro	183	192	50
Owensboro Nat. Bk	155	079	17
Bank of Commerce, Owensboro	106	559	08
Bank of Whitesville	14	722	11
Owensboro savings bank	71	185	45
Deposit Bank of Owensboro	292	849	95
Owensboro Banking Co	55	618	00
Citizens' saving- bank, Owensboro	125	607	67
Farmers' & Traders' Bk., Owensboro	115	853	81

Yours truly, L. C. NORMAN, *Auditor.*

A copy.
Att.: J. T. GRIFFITH, *Clerk*,
By JAS. H. TAYLOR, *D. C.*

Office auditor public accounts.

FRANKFORT, KY., *Jul. 6*, 1894, *189.*

County clerk, Daviess county.

DEAR SIR: The State board of valuation and assessment have made the following assessment of franchises in the above county for 1894.

Please file this statement in your office and furnish copies to the various collectors of taxes.

137	First Nat. bank, Owensboro	161	895	35
	Owensboro Nat. bank	156	699	50
	Deposit bank, Owensboro	290	026	64
	Owensboro savings bank	73	909	50
	Citizens' savings bank, Owensboro	127	345	11
	Bank of Whitesville	16	229	82
	Central Trust Co., Owensboro	28	973	42
	Bank of Commerce, Owensboro	107	440	00
	Farmers' and Traders' bank	116	808	54
	Owensboro Banking Co	53	520	17

Yours truly, L. C. NORMAN, *Auditor.*

Filed July 7, 1894, and copy delivered to J. S. Mullican, sh'ff, and copy mailed to A. M. C. Simmons, city tax collector, and copy *of* Bank of Whitesville mailed to town trustee of Whitesville.

Jt. GRIFFITH, *Clerk.*

A copy.
Att.: J. T. GRIFFITH, *Clerk,*
By JAS. H. TAYLOR, *D. C.*

Mr. Owens moved that the session be extended until the house complete the consideration of article 2.

And the question being taken on the adoption of said motion, it was decided in the affirmative.

Mr. Spalding offered an amendment to the substitute of Mr. Straus.

Mr. Reed offered an amendment to Mr. Thompson's substitute.

138 Mr. Bradford moved the previous question on article 2.

The question being taken, "Shall the main question be now put?" it was decided in the affirmative.

Mr. Sharon moved to amend the original bill by striking out the first sentence in section 1 of article 2 and inserting in lieu thereof the following, viz:

Shares of stock in State and national banks and other institutions of loan or discount and all corporations required by law to be taxed shall be taxed according to the real value of their stock and undivided surplus funds at the same rate as real estate, which shall be in full of all State tax.

And the question being taken on the adoption of said amendment, it was decided in the negative.

Mr. Thomas moved to amend article 2 as follows, viz:

Strike out the first four lines of section 1, article 2, and the words "State tax," in the fifth line, and insert the following: The entire stock of all banks doing business in this State, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate in the assessment of taxes in the county where such banking association is located and not

elsewhere, whether the holder thereof resides there or not, and said stock, together with all the assets, both real and personal, held by said banking association shall be assessed and taxed for State, county, and municipal purposes in the same manner as real and personal property in the hands of individual citizens in this State is assessed and taxed.

And the question being taken on the adoption of said amendment, it was decided in the negative.

139 Mr. Richardson moved to amend section 1 by striking out all of the first four lines and the words "State tax" and inserting in lieu thereof the following, viz:

Shares of stock in State and national banks and other institutions of loan or discount and shares of stock in all corporations required by law to be taxed on their capital stock and the surplus funds, undivided profits, or accumulations of the said banks or corporations shall be taxed according to its real value at the same rate as real estate, which shall be in full of all State tax.

And the question being taken on the adoption of said amendment, it was decided in the negative.

Mr. Richardson offered the following amendment to article 2 as additional sections, viz:

SEC. 4. Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the president or cashier of every bank and other institution of loan or discount, and all corporations contemplated in the first section of this article, shall make out a statement, under oath, showing the number of shares comprising the capital stock of such bank, corporation or institution the name and residence of each stockholder, with the number of shares owned by such stockholder in such bank, institution or corporation, the real value of each of said shares, and also the real value of the entire capital stock of such bank, institution of loan or discount, or corporation on the first day of August, and shall deliver such statement to the county clerk, in the county wherein such bank,

140 institution of loan or discount, or corporation is located, on or before the first day of September, and the county clerk shall deliver to the proper assessor a copy of such statement, and such capital stock shall thereupon be listed and assessed at its real value by the assessor to the owner thereof, in the county, city or town, where such individual may reside, and shall be taxed for county, district or municipal purposes at the same rate as other personal property in the same locality is taxed.

SEC. 5. Should any president or cashier fail to make and return said statement within the time aforesaid, the clerk of the proper county shall summon the president and cashier to appear forthwith before him, with the books of such bank, institution of loan or discount, or corporation, and said clerk is hereby empowered to compel the attendance of said officers in obedience to such summons, and to examine them under oath, and to make such investigations at the expense of such institution or corporation as may enable him to obtain the information provided for in the fourth section of this article.

SEC. 6. Taxes assessed upon such stock shall be paid by the holders or owners thereof, in the same manner and under the same penalties that other individuals or corporations are required to pay taxes.

SEC. 7. Nothing in this act shall be construed as to exempt from taxation, for municipal purposes, the shares of capital stock of any bank, institution of loan or discount, or corporation, together with their surplus funds, undivided profits or undivided accumu-
141 lations, organized under the laws of this State or the United States; but all such shares of stock, together with the surplus fund or undivided profits, or undivided accumulations, may be assessed at its real value, and taxed for all purposes at the same rate as other personal property is assessed and taxed in the same locality.

SEC. 8. All laws, general local or private, in conflict with this article, are hereby repealed.

Mr. Richardson moved to amend section 4 of the above amendment by adding, after the word "thereof," in the seventeenth line, the following words, viz: "In a column of the assessor's book designated for that purpose."

And the question being taken on the adoption of said amendment to the amendment, it was decided in the affirmative.

The question was then taken on the adoption of said amendment as amended, and it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Gardner and Keys, were as follows, viz:

Those who voted in the affirmative were—

Chas. Blanford,	Wm. Meredith,	J. H. Shearer,
L. T. Bow,	A. J. Morehead,	George Smith,
Wm. Bowman,	B. A. Neale,	I. A. Spalding,
P. A. Cline,	Samuel O. Nunn,	F. P. Straus.
Wm. T. Cox,	W. R. Ramsey,	G. Torry,
J. E. Crider,	Joseph B. Read,	Wm. P. Thorne,
T. T. Gardner,	J. F. Rennick,	Wm. A. Wallace,
W. L. Jackson, Jr.,	Gus. W. Richardson,	Thos. L. Watson,
Ben Johnson,	W. H. Riggs,	Daniel M. Williams,
142 B. C. Keys,	W. C. Rose,	Jesse S. Williams,
John B. Litsey,	Jno. W. Rowlett,	W. J. Worthington,
J. H. Lunsford,	A. R. Shacklett,	H. B. Wiseman—38.
J. W. Mayo,	John A. Shaw,	

Those who voted in the negative were—

W. A. Anderson,	H. H. Gambill,	J. J. Nesbitt,
Farnish Arnett,	Phil. B. Garnett, Jr.,	W. G. Owens,
S. L. Bays,	Drury S. Godsey,	William M. Reed,
Geo. T. Blakey,	A. P. Gooding,	Adam Renaker,
Fontaine F. Bobbitt,	Thomas A. Harris,	M. H. Scott,
Hart Boswell,	J. B. Hayden,	Ira F. Sharon,
A. J. Bradford,	W. C. Hayden,	R. H. Taylor,
James Breathitt,	Wright Kelly,	W. T. Tevis,

J. F. Bullitt, Jr.,	John H. Letterle,	R. Y. Thomas, Jr.,
Reuben Connor,	Wm. Lostutter,	P. B. Thompson, Sr.,
Jas. W. Crain,	L. F. Mann,	D. L. Thornton,
John M. Crain,	D. C. May,	R. N. Wathen,
Thos. A. Davis,	T. J. McElrath,	W. J. Watson,
J. M. Dawson, Jr.,	Thos. E. Moss,	Jas. F. Winn,
James Denton,	Harvey Myers,	T. C. Wolking—47.
W. W. Dickerson,	E. M. Nell,	

Mr. Thompson moved to amend the original bill (article 2) by adding to section 2 the following, viz:

Provided, that the tax upon each share of one hundred dollars of national banks, and of banks chartered by the State of Kentucky shall be sixty-five cents, to be paid in the manner now provided by law, directly in the treasury on the first of July of each year,
143 which tax shall be for the general purposes of government.

SEC. 5. That each of said banks, by its proper corporate authority with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or under the charters of the State banks, to a different mode or smaller rate of taxation, which consent and agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth, and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank.

SEC. 6. The said banks may take the proceedings authorized by section 5 of this act at any time until the meeting of the next General Assembly, provided they pay the tax provided in section 4, from the passage of this act.

SEC. 7. This act shall not be subject to the provisions of section 8, chapter 68, of the General Statutes.

SEC. 8. If any bank, State or national, shall refuse or fail to pay the tax imposed by this act, or shall fail or refuse to make the consent and agreement as prescribed in section 5, the shares of stock of such bank shall be assessed by the assessor at its true cash value as directed concerning other taxable property, and the same
144 taxes, State, county and municipal, shall be imposed, levied and collected upon the assessed value of said shares, as is imposed on the assessed taxable property in the hands of individuals: Provided, that nothing herein contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned and used by said banks or corporations for conducting their business, but the same may be taxed for county and municipal purposes at the same rate as other real estate is taxed.

Mr. Richardson moved to amend the amendment of Mr. Thomp-

son as follows, viz: Strike out the word "sixty-five," in section 4, and insert in lieu thereof the words "one hundred."

And the question being on the adoption of said amendment, it was decided in the negative.

Mr. Reed moved to amend section 4 of the amendment of Mr. Thompson by striking out "sixty-five cents" and inserting — lieu thereof the words "seventy-five cents."

And the question being taken on the adoption of said amendment, it was decided in the affirmative.

Mr. Thompson moved to amend the amendment offered by himself as follows, viz:

Provided, should the rate of taxation on real estate be hereafter increased, the rate of taxation herein provided as to national and State banks shall be increased to the ratio of fifty cents to seventy-five.

And the question being taken on the adoption of said amendment, it was decided in the affirmative.

Mr. Taylor moved to strike out section 1 of article 2
145 of the amendment of Mr. Thompson and insert the following, viz:

Provided, that the tax upon each share of one hundred dollars of national banks and of banks chartered by the State of Kentucky shall be seventy-five cents, of which fifty cents shall be paid in the manner now provided by law directly into the treasury on the first day of July of each year, which shall be for general purposes of government, and twenty-five cents thereof shall be paid to the county in which the bank is located for county revenue purposes on the first day of July of each year. The county court shall by order direct to whom the said tax of twenty-five cents shall be paid.

And the question being taken on the adoption of said amendment, it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Taylor and Wathen, were as follows, viz:

Those who voted in the affirmative were—

W. A. Anderson,	John B. Litsey,	A. R. Shacklett,
Geo. T. Blakey,	Wm. Lostutter,	John A. Shaw,
Chas. Blanford,	J. H. Lunsford,	J. H. Shearer,
Fontaine F. Bobbitt,	L. F. Mann,	I. A. Spalding,
Hart Boswell,	D. C. May,	F. P. Straus,
L. T. Bow,	T. J. McElrath,	R. H. Taylor,
Wm. Bowman,	A. J. Morehead,	W. T. Tevis,
A. J. Bradford,	B. A. Neale,	Wm. P. Thorne,
James Breathitt,	E. M. Nell,	D. L. Thornton,
John H. Crain,	J. J. Nesbitt,	Wm. A. Wallace,
J. E. Crider,	John P. Newman,	R. H. Wathen,

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J. M. Dawson, Jr.,	W. C. Owens,	Thomas L. Watson,
James Denton,	Jos. B. Read,	W. J. Watson,
W. W. Dickerson,	Gus. W. Richardson,	Daniel M. Williams,
Thos. A. Harris,	W. C. Rose,	W. J. Worthington,
B. C. Keys,	G. W. Samuels,	Jas. F. Winn—48.

Those who voted in the negative were—

Farish Arnett,	J. B. Hayden,	J. F. Rennick,
S. L. Bays,	W. C. Hayden,	W. M. Riggs,
P. A. Cline,	W. L. Jackson, Jr.,	M. H. Scott,
J. F. Bullitt, Jr.,	Jacob Hoertz,	Jno. W. Rowlett,
Reuben Connor,	Ben Johnson,	Ira F. Sharon,
Wm. T. Cox,	Wright Kelley,	George Smith,
Jas. W. Crain,	John M. Letterle,	G. Terry,
Thos. A. Davis,	J. W. Mayo,	R. Y. Thomas, Jr.,
H. H. Gambill,	Wm. Meredith,	P. B. Thompson, Sr.,
T. T. Gardner,	Harvey Myers,	Jesse S. Williams,
Phil. B. Gernett, Jr.,	Samuel O. Nunn,	H. B. Wiseman,
Drury S. Godsey,	W. R. Ramsey,	T. C. Wolking—38.
A. P. Gooding,	Wm. M. Reed,	

The question was then taken on the adoption of the amendment offered by Mr. Thompson, and it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Neale and Wathen, were as follows, viz:

Those who voted in the affirmative were—

W. A. Anderson,	John B. Litsey,	W. C. Rose,
Chas. Blanford,	L. F. Mann,	G. W. Samuels,
John H. Crain,	D. C. May,	A. R. Shacklett,
Phil. B. Gernett, Jr.,	T. J. McElrath,	R. H. Taylor,

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A. P. Gooding,	Thos. E. Moss,	W. T. Tevis,
Thos. A. Harris,	John P. Newman,	P. B. Thompson, Sr.,
Jacob Hoertz,	Joseph B. Read,	Wm. P. Thorne,
Ben Johnson,	Gus. W. Richardson,	R. N. Wathen—25.
John M. Letterle,		

Those who voted in the negative were—

S. L. Bays,	Harry C. Gorin,	H. M. Scott,
Geo. T. Blakey,	W. C. Haydon,	Ira F. Sharon,
Fontaine F. Bobbitt,	W. L. Jackson, Jr.,	John A. Shaw,
Hart Boswell,	Wright Kelley,	John H. Shearer,
L. T. Bow,	B. C. Keys,	George Smith,
Wm. Bowman,	Wm. Lostutter,	I. A. Spalding,
A. J. Bradford,	J. H. Lunsford,	F. P. Straus,
James Breathitt,	J. W. Mayo,	G. Terry,
J. F. Bullitt, Jr.,	Wm. Meredith,	R. Y. Thomas, Jr.,
P. A. Cline,	A. J. Morehead,	D. L. Thornton,
Reuben Connor,	Harvey Myers,	Wm. A. Wallace,
Wm. T. Cox,	B. A. Neale,	Thos. L. Watson,
Jas. W. Crain,	J. J. Nesbitt,	W. J. Watson,
J. E. Crider,	Samuel O. Nunn,	Daniel M. Williams,
Thos. A. Davis,	W. C. Owens,	Jesse S. Williams,
J. M. Dawson, Jr.,	W. R. Ramsey,	W. B. Wilson,
James Denton,	Wm. M. Reed,	Jas. F. Winn,
W. W. Dickerson,	Adam Renaker,	H. B. Wiseman,

H. H. Gambill, J. F. Rennick, W. J. Worthington,
T. T. Gardner, W. M. Riggs, T. C. Wolking—62.
Drury S. Godsey, John W. Rowlett,

Mr. Moss moved the following amendment as a substitute
148 for article 2:

That all State and national banks, and other institutions of loan or discount, shall be taxed as follows in lieu of all taxes, State, county and municipal: All with a capital of $50,000 or less, to the State $500, to the county and town or city, to be equally divided, $250; all with a capital of over $50,000 and less than $100,000, to the State $750, and to the county and town or city, to be equally divided, $350; all with a capital of $100,000 and not over $150,000 to the State $1,000, and to the county and town or city $375; all with a capital of $150,000 and not over $200,000 to the State $1,250, and to the county and city or town $400; all with *the* capital of $200,000 and not over $250,000, to the State $1,350, and to the county and city or town $400; all with a capital of $250,000 and not over $300,000, to the State $1,450, and to the county and city or town $400; all with a capital of $300,000 and not over $400,000, to the State $1,550, and to the county and city $400; all with a capital of over $400,000, to the State $1,650, and to the county and city or town $400. The amounts assessed in favor of the State shall be paid on the first day of July of each year to the auditor, and the amount assessed in favor of the county and city where the said bank or institution is located shall be paid to the city and county treasurer in equal amounts on the first day of July of each year by the president or cashier of said bank or institution.

Mr. Moss withdrew the above amendment by consent of the house.

Mr. Thornton moved the following as a substitute for
149 article 2, viz:

Stock in Banks and Other Institutions.

SEC. 1. That shares of stock in State and national banks, and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed fifty cents on each share thereof, equal to one hundred dollars, or on each one hundred dollars of stock therein, owned by individuals, corporations or societies, and said banks, institutions and corporations shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided profits or undivided accumulations, as exceeds an amount equal to twenty per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all State tax. For the purpose of ascertaining such surplus, undivided profits or undivided accumulations, the auditor may, at his option, investigate the books of such bank, institution or corporation, — who shall refuse, when duly called upon for the purpose, to allow his books to be investigated, shall be subject to indictment in the Franklin circuit court, or the circuit court

of the county wherein said bank, institution or corporation shall be located, and upon conviction, shall be fined not less than five hundred dollars and not more than one thousand dollars. The Commonwealth may, in the county wherein said bank, institution or corporation is located, institute an action in any court having civil common-law jurisdiction of the amount involved for the recovery of the fine.

SEC. 2. The cashier of a bank, and the treasurer of any other institution or corporation whose stock is taxed, shall, on the first
150 day of July in each year, report to the auditor of public accounts, the true amount of the capital stock, the true amount of the surplus, undivided profits or undivided accumulations, and how or in what said surplus, undivided profits or undivided accumulations *is* vested, and to pay into the treasury the amount of tax due. If such tax be not paid, the cashier and his sureties shall be liable for the same and twenty per cent. upon the amount, and any State bank, institution or corporation shall thereby forfeit the privilege of its charter. The officer making the report shall attach thereto the following affidavit, to which he shall make oath before some officer authorized to administer oaths:

I, —— ——, swear (or affirm) that I am the — of ——, and that I have, in the foregoing report, truly and accurately reported the amount of the capital stock, the amount of the surplus, undivided profits or undivided accumulations of said ——, and how or in what said surplus, undivided profits or undivided accumulations *is* invested.

SEC. 3. If any such bank, institution or corporation, on the first day of July in any year, has invested in the bonds or funds of the United States, which are by law exempt from taxation, more of its surplus, undivided profits or undivided accumulations than an amount equal to twenty per cent. of its capital stock, the excess of the amount so invested over the amount equal to twenty per cent. of such capital stock, shall be exempt from taxation for that
151 year, and deducted from the amount of such surplus, undivided profits or undivided accumulations upon which tax is to be assessed under this article: Provided, such investment was made in good faith, and not for the purpose of avoiding taxation. The officer who makes the report required by the second section of this article shall attach to the report his affidavit, stating that such investment was made in good faith and not for the purpose of avoiding taxation.

Mr. Thornton moved to amend his amendment by adding thereto the following sections, viz:

SEC. 4. In all cases where reports are made to the auditor by corporations or companies for the purpose of taxation for State revenue, and such corporation- or companies are liable to taxation in any county or counties for county purposes, the auditor shall, upon receiving such reports, at once furnish certified copies thereof to the clerk of the county court for each of said counties, which copies the clerk shall carefully preserve in his office. The taxes levied or assessed by the county for county purposes upon the prop-

erty of such corporation- or companies shall be levied and assessed upon the value thereof as shown by such reports, and the county clerk shall certify to the sheriff the amount of tax due from each of said corporations or companies, and the sheriff shall collect the same.

SEC. 5. Banks and other institutions of loan or discount, and all corporations mentioned and described in section 1, of this article, shall be taxed for county, district or precinct purposes; in counties, districts or precincts wherein an ad valorem tax is now or may be hereafter by law imposed, at the same rate of taxation
152 that real estate is taxed for county, district or precinct purposes, upon each share of the capital stock equal to one hundred dollars, or on each one hundred dollars of the stock therein owned by individuals, corporations or societies, and upon the same amount of its surplus, undivided profits or undivided accumulations, upon which, by this article, tax is required to be paid to the State.

SEC. 6. Banks and other institutions of loan or discount, and all corporations mentioned and described in section 1, of article 2, of this chapter, shall be taxed for municipal purposes in all incorporated cities and towns upon the fair cash value of their real estate situated in such cities and towns at the same rate of taxation that is assessed on other real estate in such cities and towns: Provided, however, that nothing herein shall prevent such cities and towns from requiring such banks, institutions or corporations to pay any license which is now required of and paid by them.

SEC. 7. All laws, general, local or private, in conflict with this article, are hereby repealed.

And the question being taken on the adoption of said amendment, it was decided in the affirmative.

Mr. Thornton moved to amend his substitute for article 2 as follows, viz:

Strike out of the fourth line of section 1 the following words, "fifty cents on each share thereof," and substitute therefor the words "the same rate of taxation that is assessed upon real estate on each share of said capital stock."

And the question being taken on the adoption of said amendment, it was decided in the affirmative.

153 Mr. Myers moved to amend the amendment of Mr. Thornton to his substitute by adding to section 6 the following, viz:

And provided, that all municipal corporations when no county tax is collected may license such institutions in such sum as may be ordained by the governing boards of such municipalities, not exceeding, however, the sum of five hundred ($500) dollars per annum each.

And the question being taken on the adoption of said amendment, it was decided in the negative.

Mr. Myers moved to reconsider the vote by which said amendment was rejected.

And the question being taken on the adoption of said motion, it was decided in the affirmative.

The question was then taken on the adoption of said amendment of Mr. Myers, and it was decided in the affirmative.

Mr. Boswell moved to amend the substitute of Mr. Thornton by adding to section 3 the following, viz:

Tax shall not exceed twenty cents on each share of stock equal to one hundred dollars, nor at a greater rate than twenty cents on the same amount of its surplus, undivided profits, or undivided accumulations upon which, by article 2, tax is required to be paid to the State.

And the question being taken on the adoption of said amendment, it was decided in the negative.

Mr. Reed moved to amend the substitute of Mr. Thornton by striking out the words "twenty per cent." wherever they occur and inserting in lieu thereof the words "ten per cent."

154 And the question being taken on the adoption of the substitute of Mr. Thornton as amended, *and* it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Cox and Straus, were as follows, viz:

Those who voted in the affirmative were—

W. A. Anderson,	Phil. B. Gernett, Jr.,	Adam Renaker,
Farish Arnett,	Drury S. Godsey,	Gus. W. Richardson.
S. L. Bays,	Harry C. Gorin,	G. W. Samuels,
Geo. T. Blakey,	Jacob Hoertz,	M. H. Scott,
Chas. Blanford,	W. L. Jackson, Jr.,	Ira F. Sharon,
Fontaine F. Bobbitt,	Richard A. Jones,	John A. Shaw,
Hart Boswell,	B. C. Keys,	I. A. Spalding,
L. T. Bow,	John M. Letterle,	J. Boyle Stone,
Wm. Bowman,	Jno. B. Litsey,	F. P. Straus,
A. J. Bradford,	D. C. May,	R. H. Taylor,
Jas. Breathitt,	J. W. Mayo,	W. T. Tevis,
J. F. Bullitt, Jr.,	T. J. McElrath,	P. B. Thompson, Sr.,
P. A. Cline,	Harvey Myers,	Wm. P. Thorne,
Reuben Connor,	E. M. Nell,	D. L. Thornton,
Jas. W. Crain,	J. J. Nesbitt,	R. N. Wathen,
Thos. A. Davis,	Samuel O. Nunn,	W. J. Watson,
W. W. Dickerson,	W. C. Owens,	Jesse S. Williams,
H. H. Gambill,	Joseph B. Reed,	W. J. Worthington,
T. T. Gardner,	W. M. Reed,	W. B. Wilson—60.

Those who voted in the negative were—

Wm. T. Cox,	Wm. Lostutter,	Jno. W. Rowlett,

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J. E. Crider,	J. H. Lunsford,	A. R. Shacklett,
J. M. Dawson, Jr.,	L. F. Mann,	J. H. Shearer,
James Denton,	Wm. Meredith,	George Smith,
A. P. Gooding,	A. J. Morehead,	G. Terry,

Thos. A. Harris,	Thos. E. Moss,	R. Y. Thomas, Jr.,
W. C. Haydon,	B. A. Neale,	H. B. Wiseman,
Ben Johnson,	J. F. Rennick,	T. C. Wolking—26.
Wright Kelley,	W. M. Riggs,	

Mr. Straus offered the following as a substitute for article 2, viz:

SEC. 1. That the same rate of taxation for State purposes which is, or which may be hereafter, levied in any year on other real estate in this Commonwealth shall be, and is hereby, levied upon the fair cash valuation of all of the capital stock of the State and other banks, except national banks, in this Commonwealth and all other institutions of loan or discount, and all corporations now required by law to be taxed on their capital stock, and upon the fair cash valuation of all shares of national bank stock, of banks located in this Commonwealth; and the same rate of taxation for the purpose of any county, precinct or municipality in which such bank or other institution above named is located, which is, or which may hereafter in any year be, levied on other such property therein, shall be, and is hereby, levied on all of the property above named of every such bank or other institution, any special privilege or exemptions in any of the charters of any such corporations or institutions to the contrary notwithstanding.

156 SEC. 2. For the purpose of ascertaining the fair cash valuation provided in section 1 of this act, the auditor may at his option, investigate by himself or agent the books of any bank or other corporation above named, and any officer having in charge the affairs of any such institution, or having the control or custody of its books, who shall refuse, when duly called upon for that purpose, to allow such books to be examined, shall be subject to indictment in the Franklin circuit court, or in the circuit court of the county wherein any such bank or other institution shall be located, and upon conviction shall be fined not less than one hundred and not more than one thousand dollars, the Commonwealth may, in the county wherein any such bank or other institution named is located, institute an action in any court having civil common law jurisdiction of the amount involved for the recovery of such fine.

SEC. 3. The cashier of every bank and the treasurer of all other institutions mentioned in this act, shall on the first day of July of each year, report the fair cash value under oath of all the capital stock, deposits, reserve funds, surplus and all other real and personal property of every kind owned at that time by such bank or other institution to the auditor of public accounts, and pay into the treasury of the State at the same time the full amount of the taxes due the State. If the taxes be not then paid, the cashier or treasurer and his sureties shall be liable for the same and twenty per cent. on the amount.

157 SEC. 4. Whenever the valuations above named are made and reported to the auditor, it shall be his duty to forward a copy thereof to the county clerk of the several counties wherein such bank or other institution is located, which shall be carefully preserved by him in his office, and the sheriff or other tax collector

therein shall collect the amount of taxes due the county precinct or municipality under this act, under the same regulations and with the same remedies, and with the same liens that are now provided by law for the collection of other such taxes, and such officer shall be liable in the same manner and shall pay over such taxes to the same persons as now provided in reference to other such taxes.

SEC. 5. All the deposits of money, notes, bonds and all other choses in action, other than the bonds of the United States, in any and all of the banks or other institutions named in this act shall be liable to taxation by the owner thereof at the same rate as other such property, and shall be reported to the assessor by such owner at the same time and manner as other such property is reported, any exemption or special privilege in any charter to the contrary notwithstanding.

SEC. 6. All general and special laws fixing the rate of taxation on the capital stock or other property of any bank or other institution named in this act, and taxing same, and all laws excepting from taxation any property of any such institution, or of any depositor therein, are hereby repealed.

Mr. Straus moved to amend his substitute by striking out of the twelfth line of section 1 the word "such" and inserting in lieu thereof the word "personal."

158 Mr. J. B. Read moved to amend the substitute of Mr. Straus by adding to the first section thereof the following, viz:

Provided, that no county shall levy, and this act shall not be construed to levy for county purposes of any county, a tax on the capital stock of any such institution greater than twenty cents on each one hundred dollars' worth thereof, estimated at its fair cash value; and that no municipality shall levy, and this act shall not be construed to levy for municipal purposes of any municipality, a tax on the capital stock of any such institution greater than thirty cents on each one hundred dollars' worth thereof, estimated at its fair cash value.

And the question being taken on the adoption of said amendment, it was decided in the negative.

Mr. Spalding moved the following as a substitute for section 1 of the substitute of Mr. Straus, viz:

That shares of stock in State and national banks and other institutions of loan or discount, and in all other corporations required by law to be taxed on their capital stock shall be annually taxed on the par value thereof at the same rate of taxation that is, or may hereafter, in any one year be levied on other personal property in this State for State revenue, or as may be levied on such personal property in any county, precinct or municipality for county, precinct or municipal purposes, and shall in addition thereto annually pay upon each one hundred dollars of so much of their surplus, undivided profits or *undivided profits or* undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation each year as is or may be levied in any one year or other personal property for county, precinct or municipal purposes,

159 any exemptions or special privileges in any of the charters of such banks, institutions or corporations to the contrary notwithstanding.

The question was then taken on adopting said substitute, and it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Spalding and Thorne, were as follows, viz:

Those who voted in the affirmative were—

W. A. Anderson,	A. P. Gooding,	W. M. Riggs,
Geo. T. Blakey,	Harry C. Corin,	Jno. W. Rowlett,
Chas. Blanford,	Thos. A. Harris,	A. R. Shacklett,
Hart Boswell,	Ben Johnson,	Ira F. Sharon,
Wm. Bowman,	Wright Kelly,	John A. Shaw,
A. J. Bradford,	B. C. Keys,	J. H. Shearer,
James Breathitt,	Wm. Lostutter,	George Smith,
J. F. Bullitt, Jr.,	J. H. Lunsford,	I. A. Spalding,
P. A. Cline,	D. C. May,	J. Boyle Stone,
Wm. T. Cox,	Wm. Meredith,	F. P. Straus,
J. E. Crider,	A. J. Morehead,	G. Terry,
J. M. Dawson, Jr.,	Hayvey Myers,	Wm. P. Thorne,
James Denton,	B. A. Neale,	D. L. Thornton,
W. W. Dickerson,	Jno. P. Newman,	R. N. Wathen,
H. H. Cambill,	Samuel O. Nunn,	Thos. L. Watson,
T. T. Gardner,	W. C. Owens,	Daniel N. Williams,
Phil. B. Gernett,	J. F. Rennick,	Jesse S. Williams,
Drury S. Godsey,	Gus. W. Richardson,	Jas. F. Winn—54.

Those who voted in the negative were—

S. L. Bays,	John M. Letterle,	G. W. Samuels,

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Fontaine F. Bobbitt,	John B. Litsey,	M. H. Scott,
L. T. Bow,	L. F. Mann,	R. H. Taylor,
Reuben Connor,	J. W. Mayo,	W. T. Tevis,
Jas. W. Crain,	T. J. McElrath,	R. Y. Thomas, Jr.,
John H. Crain,	Thomas E. Moss,	P. B. Thompson, Sr.,
Thos. A. Davis,	E. M. Nell,	W. J. Watson,
W. C. Haydon,	J. J. Nesbitt,	H. B. Wiseman,
Jacob Hoertz,	Joseph B. Read,	W. J. Worthington,
W. L. Jackson, Jr.,	Wm. M. Reed,	T. C. Wolking—32.
Richard A. Jones,	Adam Renaker,	

The question was then taken on the adoption of the substitute of Mr. Straus, as amended, and it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Straus and Tevis, were as follows, viz:

Those who voted in the affirmative were—

S. L. Bays,	W. C. Haydon,	John W. Rowlett,
Charles Blanford,	Ben Johnson,	A. R. Shacklett,
Fontaine F. Bobbitt,	Wright Kelley,	John A. Shaw,
L. T. Bow,	B. C. Keys,	J. H. Shearer,
Wm. Bowman,	Wm. Lostutter,	I. A. Spalding,
A. J. Bradford,	J. H. Lunsford,	F. P. Straus,

James Breathitt, J. W. Mayo, G. Terry,
J. F. Bullitt, Jr., Wm. Merideth, R. Y. Thomas, Jr.,
Wm. T. Cox, A. J. Morehead, Wm. P. Thorne,
J. E. Crider, B. A. Neale, Thomas L. Watson,
J. M. Dawson, Jr., Samuel O. Nunn, Daniel M. Williams,

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James Denton, W. R. Ramsey, Jessee S. Williams,
W. W. Dickerson, J. F. Rennick, W. J. Worthington,
T. T. Gardner, Gus. W. Richardson, H. B. Wiseman—44.
H. C. Gorin, W. M. Riggs,

Those who voted in the negative were—

W. A. Anderson, Wm. L. Jackson, Jr., Adam Renaker,
Farish Arnett, Richard A. Jones, G. W. Samuels,
Geo. T. Blakey, John M. Letterle, M. H. Scott,
Hart Boswell, John B. Litsey, Ira F. Sharon,
P. A. Cline, L. F. Mann, George Smith,
Reuben Connor, D. C. May, J. Boyle Stone,
Jas. W. Crain, T. J. McElrath, R. H. Taylor,
John H. Crain, Thos. E. Moss, W. T. Tevis,
Thomas A. Davis, Harvey Myers, P. B. Thompson, Sr.,
H. H. Gambill, E. M. Nell, P. L. Thornton,
Phil. B. Gernett, Jr., J. J. Nesbitt, R. N. Wathen,
Drury S. Godsey, John P. Newman, W. J. Watson,
A. P. Gooding, W. C. Owens, W. B. Wilson,
Thos. A. Harris, Joseph B. Read, Jas. F. Winn,
J. B. Haydon, W. H. Reed, T. C. Wolking—46.
Jacob Hoertz,

Mr. Mann moved that the house adjourn.

Mr. Richardson moved to amend so that when the house adjourns it be to meet again at 3 o'clock.

And the question being taken on the adoption of said amendment, it was decided in the negative.

The question was then taken on the adoption of the mo-
162 tion of Mr. Mann, and it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Owens and Richardson, were as follows, viz:

Those who voted in the affirmative were—

S. L. Bays, W. L. Jackson, Jr., Gus. W. Richardson,
Geo. T. Blakey, Ben Johnson, John W. Rowlett,
Chas. Blanford, Wright Kelley, M. H. Scott,
Fontaine F. Bobbitt, B. C. Keys, A. R. Shacklett,
L. T. Bow, Jno. B. Litsey, Jno. A. Shaw,
Wm. Bowman, Wm. Lostutter, J. H. Shearer,
A. J. Bradford, J. H. Lunsford, George Smith,
James Breathitt, D. C. May, F. P. Straus,
Wm. T. Cox, J. W. Mayo, G. Terry,
Thos. A. Davis, Wm. Merideth, Thos. L. Watson,

J. M. Dawson, Jr.,	A. J. Morehead,	Daniel M. Williams,
James Denton,	B. A. Neale,	Jesse S. Williams,
H. H. Gambill,	E. M. Nell,	Jas. F. Winn,
T. T. Gardner,	Samuel O. Nunn,	H. B. Wiseman,
Phil. B. Gernett, Jr.,	W. R. Ramsey,	W. J. Worthington,
Jacob Hoertz,	Adam Renaker,	T. C. Wolking—48.

Those who voted in the negative were—

W. A. Anderson,	Thos A. Harris,	Ira F. Sharon,
Farish Arnett,	W. C. Haydon,	I. A. Spalding,
Hart Boswell,	Richard A. Jones,	J. Boyle Stone,
J. F. Bullitt, Jr.,	Jno. M. Letterle,	R. H. Taylor,
P. A. Cline,	L. F. Mann,	W. T. Tevis,
Reuben Connor,	Thomas E. Moss,	R. Y. Thomas, Jr.,

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Jas. W. Crain,	John P. Newman,	P. B. Thompson, Jr.,
Jno. H. Crain,	W. C. Owens,	Wm. P. Thorne,
J. E. Crider,	Jos. B. Read,	D. L. Thornton,
W. W. Dickerson,	Wm M. Reed,	W. J. Watson,
Drury S. Godsey,	G. W. Samuels,	W. B. Wilson—34.
A. P. Gooding,		

The house then adjourned until tomorrow morning at 10 o'clock.

An act to amend the charter of the Goshen and Sligo Turnpike Road Company;

An act to prohibit the sale of spirituous, vinous, and malt liquors within two miles of Oregon Ferry, on the Kentucky river, in Woodford and Mercer counties;

An act for the benefit of C. B. Fox, of Clark county;

An act for the benefit of school district No. 18, in Kenton county;

An act to change the voting place in Justices' district No. 2, usually called the Millville precinct, in Woodford county;

An act to reduce and defind the boundary of the town of Morehead, in Rowan county;

An act to amend the charter of Lewisburg, in Logan county;

An act to authorize the sale of the Payne's Depot and Mt. Vernon Turnpike road, in Scott and Woodford counties;

An act changing the sorporate limits of the town of Mayslick, in Mason county;

And had found the same correctly enrolled.

Whereupon the speaker affixed his signature thereto.

164 Ordered that Mr. Williams inform the senate thereof.

The hour arriving for the consideration of the special order, the house took up a bill entitled—

A bill to amend the revenue laws of the Commonwealth of Kentucky.

Mr. Richardson called up the motion heretofore entered by Mr. Smith to reconsider the vote by which the house rejected the substitute offered by Mr. Strauss.

Mr. Thornton moved to lay said bill on the table.

And the question being taken on the adoption of said motion, it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Straus and Thornton, were as follows, viz:

Those who voted in the affirmative were—

Farish Arnett,	Jacob Hoertz,	Adam Renaker,
S. L. Bays,	W. L. Jackson, Jr.,	G. W. Samuels,
Geo. T. Bakey,	Richard A. Jones,	Ira F. Sharon,
Wm. Bowman,	L. F. Mann,	R. H. Taylor,
Hart Boswell,	John M. Letterle,	J. Boyle Stone,
P. A. Cline,	D. C. May,	W. T. Tevis,
Reuben Connor,	T. J. McElrath,	P. B. Thompson, Sr.,
Jas. W. Crain,	Thos. E. Moss,	D. L. Thornton,
John H. Crain,	Harvey Myers,	R. N. Wathen,
Thos. A. Davis,	E. M. Nell,	W. J. Watson,
H. H. Gambill,	John P. Newman,	Daniel M. Williams,
Phil B. Gernett, Jr.,	W. C. Owens,	W. B. Wilson,
Drury S. Godsey,	Joseph B. Read,	Mr. Speaker (Offutt),
Thomas A. Harris,	W. M. Reed,	T. C. Wolking—43.
J. B. Hayden,		

165 Those who voted in the negative were—

Chas. Blanford,	Jno. B. Litsey,	A. R. Shacklett,
Fontaine F. Bobbitt,	Wm. Lostutter,	J. H. Shearer,
L. T. Bow,	J. H. Lunsford,	George Smith,
A. J. Bradford,	Wm. Merideth,	I. A. Spalding,
Wm. T. Cox,	A. J. Morehead,	F. P. Straus,
J. E. Crider,	B. A. Neale,	G. Terry,
J. M. Dawson, Jr.,	Samuel O. Nunn,	R. Y. Thomas, Jr.,
James Denton,	W. R. Ramsey,	Wm. P. Thorne,
A. P. Gooding,	Gus. W. Richardson,	Wm. A. Wallace,
Harry C. Gorin,	W. M. Riggs,	Thos. L. Watson,
W. C. Haydon,	W. C. Rose,	Jesse S. Williams,
Ben Johnson,	John W. Rowlett,	Jas. F. Winn,
Wright Kelley,	M. H. Scott,	H. B. Wiseman—40.
B. C. Keys,		

Paired: Worthington in the affirmative and Anderson in the negative.

Mr. Read moved the following substitute for article 2, viz:

SEC. 1. Bank stock or stock in any monied corporation of loan or discount shall be taxed fifty cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations or societies.

SEC. 2. The cashier of a bank and the treasurer of any other institution of loan or discount, whose stock is taxed, shall, on the first day of July in each year, pay into the treasury the amount of tax due, which shall be in full of all tax against the corporation
166 of the stock therein, authorized by the State. If such tax be not paid, the cashier and his sureties shall be liable for the

same and twenty per cent. upon the amount, and the said bank or corporation shall thereby forfeit the privilege of its charter.

Mr. Read withdrew the above substitute by unanimous consent.

Mr. Owens moved as a substitute for article 2, viz:

SEC. 1. That shares of stock in State and national banks and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations or societies, and said banks, institutions and corporations shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided surplus, undivided profits or undivided accumulations, as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State county and municipal. For the purpose of ascertaining such surplus, undivided profits or undivided accumulations the auditor may, at his option, investigate the books of such bank, institution or corporation, and any officer having in charge the affairs of such bank, institution or corporation, who shall refuse, when duly called upon for the purpose, to allow his books to be investigated, shall be subject to indictment in the Franklin circuit court or the circuit court of the county wherein said bank, institution or corporation shall be located, and upon
167 conviction shall be fined not less than five hundred dollars and not more than one thousand dollars. The Commonwealth may, in the county wherein said bank, institution or corporation is located, institute an action in any court having civil common law jurisdiction of the amount involved for the recovery of the fine.

SEC. 2. The cashier of a bank and the treasurer of any other institution or corporation, whose stock is taxed shall, on the first day of July of each year, report to the auditor of public accounts the true amount of the capital stock, the true amount of the surplus, undivided profits or undivided accumulations and how or in what said surplus, undivided profits or undivided accumulations *is* invested, and pay into the treasury the amount of tax due. If such tax be not paid, the cashier and his sureties shall be liable for the same, and twenty per cent. upon the amount, and any State bank, institution or corporation shall thereby forfeit the privilege of its charter. The officer making the report shall attach thereto the following affidavit to which he shall make oath before some officer authorized to administer oaths:

I, —— ——, swear (or affirm) that I am the — of ——, and that I have in the foregoing report truly and accurately reported the amount of the capital stock, the amount of the surplus, and undivided profits or undivided accumulations of said ——, and how or in what said surplus, undivided profits or undivided accumulations *is* invested.

SEC. 3. If any such bank, institution or corporation, on the first day of July in any year has invested in the bonds or funds
168 of the United States, which are by law exempt from taxation, more of its surplus, undivided profits or undivided ac-

cumulations than an amount equal to ten per cent. of such capital stock, the excess of the amount so invested over the amount equal to ten per cent. of such capital stock shall be exempt for taxation for that year and deducted from the amount of such surplus, undivided profits or undivided accumulations upon which tax is to be assessed under this article: Provided, such was made in good faith and not for the purpose of avoiding taxation; the officer who makes the report required by the second section of this article shall attach to the report his affidavit, stating that such investment was made in good faith and not for the purpose of avoiding taxation.

SEC. 4. That each of said banks, institutions and corporations, by its proper corporate authority with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right, under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth, and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank.

169 SEC. 5. The said banks may take the proceedings authorized by section 4, of this act, at any time until the meeting of the next General Assembly: Provided, they pay the tax provided in section 1 from the passage of this act.

SEC. 6. This act shall be subject to the provisions of section 8, chapter 68, of the General Statutes.

SEC. 7. If any bank, State or national, shall refuse or fail to pay the tax imposed by this act, or shall fail or refuse to make the consent and agreement as prescribed in section 4, the shares of stock of such bank, institution or corporation, and its surplus, undivided accumulations and undivided profits shall be assessed, as directed by section 2 of this act, and the same taxes, State, county and muncipal shall be imposed, levied and collected upon the assessed shares, surplus, undivided profits or undivided accumulations as is imposed on the assessed taxable property in the hands of individuals: Provided, that nothing herein contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned and used by said banks or corporations for conducting their business; but the same may be taxed for county and municipal purposes at the same rate as other real estate is taxed.

Mr. Owen moved to amend the amendment offered by him by striking out of section 1 the words "ten per cent." and inserting in lieu thereof the words "twenty per cent."

And the question being taken on the adoption of said amendment, it was decided in the negative.

The yeas and nays, being required thereon by Messrs.
170 Reed and Johnson, were as follows, viz:

Those who voted in the affirmative were—

Farish Arnett,	Richard A. Jones,	G. W. Samuels,
Geo. T. Blakey,	Jno. M. Letterle,	M. H. Scott,
Hart Boswell,	John B. Litsey,	Ira F. Sharon,
Wm. Bowman,	S. I. M. Major,	R. H. Taylor,
Reuben Connor,	L. F. Mann,	W. T. Tevis,
Jas. W. Crain,	D. C. May,	P. B. Thompson, Sr.,
Phil B. Gernett, Jr.,	Thos. E. Moss,	R. N. Wathen,
Drury S. Godsey,	Harvey Myers,	W. J. Watson,
A. P. Gooding,	E. M. Nell,	W. B. Wilson,
Thos. A. Harris,	W. C. Owens,	Mr. Speaker (Offutt),
Jacob Hoertz,	Jos. B. Read,	T. C. Wolking—35.
W. L. Jackson, Jr.,	Adam Renaker,	

Those who voted in the negative were—

S. L. Bays,	Ben Johnson,	A. R. Shacklett,
Fontaine F. Bobbitt,	B. C. Keys,	George Smith,
L. T. Bow,	Wm. Lostutter,	I. A. Spalding,
A. J. Bradford,	J. H. Lunsford,	J. Boyle Stone,
P. A. Cline,	T. J. McElrath,	F. P. Straus,
Wm. T. Cox,	Wm. Merideth,	G. Terry,
John H. Crain,	A. J. Morehead,	R. Y. Thomas, Jr.,
J. E. Crider,	B. A. Neale,	Wm. P. Thorne,
Thomas A. Davis,	Samuel O. Nunn,	D. L. Thornton,
J. M. Dawson, Jr.,	W. R. Ramsey,	Wm. A. Wallace,
James Denton,	Wm. M. Reed,	Thos. L. Watson,
H. H. Gambill,	Gus. W. Richardson,	Daniel M. Williams,
Harry C. Gorin,	W. M. Riggs,	Jesse S. Williams,

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J. B. Hayden,	W. C. Rose,	Jas. F. Winn,
W. C. Haydon,	Jno. W. Rowlett,	H. B. Wiseman—48.

Mr. Richardson moved to amend the substitute of Mr. Owens by striking out of section 1 the words "seventy-five" and inserting in lieu thereof the words "one hundred."

And the question being taken on the adoption of the amendment, it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Richardson and Straus, were as follows, viz:

Those who voted in the affirmative were—

S. L. Bays,	Wright Kelly,	W. M. Riggs,
Chas. Blanford,	B. C. Keys,	W. C. Rose,
L. T. Bow,	Wm. Meredith,	A. R. Shacklett,
A. J. Bradford,	A. J. Morehead,	R. Y. Thomas, Jr.,
P. A. Cline,	Samuel O. Nunn,	Wm. A. Wallace,
J. E. Crider,	J. F. Rennick,	F. P. Straus—20.
Ben Johnson,	Gus. W. Richardson,	

Those who voted in the negative were—

Farish Arnett,	W. L. Jackson, Jr.,	M. H. Scott,
Geo. T. Blakey,	Richard A. Jones,	Ira F. Sharon,
Fontaone F. Bobbitt,	John M. Letterle,	George Smith,
Hart Boswell,	John B. Litsey,	I. A. Spalding,
Wm. Bowman,	Wm. Lostutter,	J. Boyle Stone,
Reuben Connor,	J. H. Lunsford,	R. H. Taylor,
Wm. T. Cox,	S. I. M. Major,	G. Terry,
Jas. W. Crain,	L. F. Mann,	W. T. Tevis,
John H. Crain,	D. C. May,	P. B. Thompson, Sr.,

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R. W. Creal,	T. J. McElrath,	Wm. P. Thorne,
Thos. A. Davis,	Thos E. Moss,	D. L. Thornton,
J. M. Dawson, Jr.,	Harvey Myers,	R. N. Wathen,
James Denton,	B. A. Neale,	Thos. L. Watson,
H. H. Gambill,	E. M. Nell,	W. J. Watson,
Phil. B. Gernett, Jr.,	Jon. P. Newman,	Daniel M. Williams,
Drury S. Godsey,	W. C. Owens,	Jesse S. Williams,
A. P. Gooding,	Joseph B. Read,	W. B. Wilson,
Harry C. Gorin,	Wm. M. Reed,	Jas. F. Winn,
Thomas A. Harris,	Adam Renaker,	H. B. Wiseman,
J. B. Hayden,	John W. Rowlett,	Mr. Speaker (Offutt),
W. C. Hayden,	G. W. Samuels,	T. C. Wolking—64.
Jacob Hoertz,		

The question was then taken on the adoption of the substitute of Mr. Owens, and it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Reed & Tevis, were as follows, viz:

Those who voted in the affirmative were—

Farish Arnett,	Jacob Hoertz,	Ira F. Sharon,
S. L. Bays,	Richard A. Jones,	J. Boyle Stone,
Geo. T. Blakey,	S. I. M. Major,	F. P. Straus,
Chas. Blanford,	L. F. Mann,	R. H. Taylor,
Fontaine F. Bobbitt,	D. C. May,	G. Terry,
Hart Boswell,	T. J. McElrath,	W. T. Tevis,
A. J. Bradford,	Thos. E. Moss,	P. B. Thompson, Sr.,
P. A. Cline,	E. M. Nell,	Wm. P. Thorne,
Reuben Connor,	Jno. P. Newman,	R. N. Wathen,

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Jas. W. Crain,	W. C. Owens,	Thos. L. Watson,
J. E. Crider,	Joseph B. Read,	W. J. Watson,
H. H. Gambill,	Wm. M. Reed,	Daniel M. Williams,
Drury S. Godsey,	Adam Renaker,	Jesse S. Williams,
A. P. Gooding,	Jno. W. Rowlett,	W. B. Wilson,
Thos. A. Harris,	G. W. Samuels,	Mr. Speaker (Offutt),
J. B. Hayden,	M. H. Scott,	T. C. Wolking—49.
W. C. Haydon,		

Those who voted in the negative were—

Wm. Bowman,	John B. Litsey,	W. C. Rose,
Wm. T. Cox,	Wm. Lostutter,	A. R. Shacklett,
John H. Crain,	J. H. Lunsford,	J. H. Shearer,
J. M. Dawson, Jr.,	A. J. Morehead,	I. A. Spalding,
Phil B. Gernett, Jr.,	Harvey Myers,	R. Y. Thomas, Jr.,
Wm. L. Jackson, Jr.,	B. A. Neale,	D. L. Thornton,
Ben Johnson,	Samuel O. Nunn,	Wm. A. Wallace,
Wright Kelley,	J. F. Rennick,	Jas. F. Winn,
B. C. Keys,	Gus W. Richardson,	H. B. Wiseman—32.
John M. Letterle,	W. M. Riggs,	

Mr. Owens moved to reconsider the vote by which the house passed the substitute of Mr. Owens.

Mr. Major moved to lay said motion on the table.

And the question being taken on the adoption of said motion, it was decided in the affirmative.

The house then resumed the consideration of article 1.

Mr. Harris moved to amend section 1 of article 1 by striking out in the second line the words "of fifty-two cents" and inserting "to be ascertained by the board of equalization after the returns of the assessors shall have been filed with the auditor to provide for the expenses of all kinds of the State government not exceeding fifty-two cents."

And the question being taken on the adoption of said amendment, it was decided in the negative.

Mr. Nell moved to amend section 1 of article 1 by striking out "fifty-two" and inserting "forty" in lieu thereof.

And the question being taken on the adoption of said amendment, it was decided in the negative.

Mr. Reed moved to amend section 1 of article 1 by striking out of the second line the figures "fifty-two" and inserting in lieu thereof the word "fifty," and strike out "twenty-five cents" and insert "twenty-three cents" in the seventh line.

And the question being taken on the adoption of said amendment, it was decided in the negative.

Mr. Richardson moved to amend article 1, section 1, by striking out the figures "fifty-two," in the second line, and inserting in lieu thereof the words "forty-seven;" strike out the words "twenty-five," in the seventh line, and insert the word "twenty" in lieu thereof.

And the question being taken on the adoption of said amendment, it was decided in the affirmative.

Mr. Myers moved the previous question.

And the question being taken on the adoption of said mtioon, it was decided in the affirmative.

Ordered, That said bill as amended be engrossed and read a third time.

Mr. Thornton moved to amend article 5 by way of engrossed ryder by striking out section 24 of said article.

And the question being taken on the adoption of said amendment, it was decided in the affirmative.

Mr. Keys moved to amend by way of engrossed ryder by adding to subsection 3 of article 1 of section 9 the words "agricultural implements not to exceed five hundred dollars in value."

And the question being taken on the adoption of said amendment, it was decided in the negative.

Mr. Jackson moved the previous question.

The question being taken, "Shall the main question be now put?" it was decided in the affirmative.

Said bill, having been engrossed, was read a third time as follows, viz:

The question being put upon the adoption of section 1 of the second article of said bill—

Mr. Gilbert moved the following amendment as a substitute for said article, viz:

SEC. 1. Be it enacted by the General Assembly of the Commonwealth of Kentucky, That the same rate of taxation for State purposes which is or which may be hereafter levied in any year on other real estate in this Commonwealth, shall be, and is hereby, levied upon the fair cash valuation of all of the shares of capital stock of the State, national and other banks in this Commonwealth, and all other institutions of loan or discount, and all corpo-
176 rations now required by law to be taxed on thier capital stock; and the same rate of taxation for the purpose of any county, precinct or municipality in which such bank or other institution above named is located, which is or may hereafter in any year be levied on other property therein, shall be, and is hereby, levied on all of the personal property above named of every such bank or other institution, any special privilege or exemption in any of the charters of any such corporations or institutions to the contrary notwithstanding.

SEC. 2. For the purpose of ascertaining the fair cash valuation provided in section 1 of this act, the auditor may, at his option, investigate by himself or agent, the books of any bank or other corporation above named; and any officer having in charge the affiars of such institution, or having the control or custody of its books who shall refuse when duly called upon for that purpose to allow such books to be examined, shall be subject *in* indictment in the Franklin circuit court, or in the circuit court of the county wherein any such bank or other institution shall be located, and upon conviction shall be fined not less than one hundred and not more than one thousand dollars. The Commonwealth may, in the county wherein any such bank or other institution named is located, institute an action in any court having civil, common-law jurisdiction of the amount involved for the recovery of such fine.

SEC. 3. The cashier of every bank, and the treasurer of all other institutions mentioned in this act, shall, on the first day of July of each year, report the fair cash value under oath of the capital stock, deposits, reserve funds, surplus and all other real and personal property of every kind, owned at that time by such bank or
177 other institution, to the auditor of public accounts and pay into the treasury of the State at the same time the full

amount of the taxes due the State. If the taxes be not then paid the cashier or treasurer and his sureties shall be liable for the same, and twenty per cent. upon the amount.

SEC. 4. Whenever the valuations above named are made and reported to the auditor, it shall be his duty to forward a copy thereof to the county clerk of the several counties wherein such bank or other such institution is located, which shall be carefully preserved by him in his office; and the sheriff or other tax collector therein shall collect the amount of taxes due the county, precinct or municipality under this act, under the same regulations and with the same remedies and with the same liens that are now provided by law for the collection of other such taxes; and such officer shall be liable in the same manner, and shall pay over such taxes to the same person as now provided in reference to other such taxes.

SEC. 5. All the deposits of money, notes, bonds and other choses in action, other than the bonds of the United States in any and all of the banks or other institutions named in this act, shall be liable to taxation by the owner thereof at the same rate as other such property, and shall be reported to the assessor by such owner at the same time and manner as other such property is reported, any exemption or special privilege in any character to the contrary notwithstanding.

SEC. 6. All general and special laws fixing the rate of taxation on the capital stock or other property of any bank or other insti-
178 tution named in this act and taxing same and all laws exempting from taxation any property of any such institution or of any depositor therein, are hereby repealed.

Mr. Simon moved to amend said proposed substitute as follows, viz:

Amend Mr. Gilbert's substitute by exempting (20) twenty per cent. of surplus fund of all or any banks whenever set apart as a reserve fund.

And the question being taken thereon, it was decided in the negative. The question was then taken on the said proposed substitute offered by Mr. Gilbert, and it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Gilbert and J. R. W. Smith, were as follows, viz:

Those who voted in the affirmative were—

S. H. Boles,	W. F. Neat,	D. H. Smith,
G. G. Gilbert,	J. T. Simon,	Robert Walker—7.
S. E. Hill,		

Those who voted in the negative were—

M. C. Alford,	W. M. Cravens,	J. H. McDaniel,
A. S. Berry,	Henry Dixon,	L. W. McKee,
J. W. Bryan,	John Feland,	J. N. Price,
R. A. Burnett,	W. H. Frederick,	J. R. W. Smith,
W. W. Bush,	T. S. Grundy,	W. H. Taulbee,

W. J. Caudill,	R. G. Hays,	R. S. Triplett,
C. M. Clay, Jr.,	H. T. Kendall,	J. H. Wilson—23.
F. M. Clement,	L. M. Martin,	

Paired—Ogilvie, yea; Sparks, nay.

Mr. Martin proposed the following amendment as a substitute for said article, viz:

179 SEC. 1. That shares of stock in State and national banks and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock shall be taxed 70 cents on each share thereof equal to $100, or on each $100 of stock therein owned by individuals, corporations or societies, and said banks, institutions and corporations shall in addition, pay upon each $100 of so much or their surplus undivided surplus, undivided profits or undivided accumulations as exceeds an amount equal to 20 per cent. of their capital stock the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county and municipal. For the purpose of ascertaining such surplus, undivided profits or undivided accumulations the auditor may, at his option, investigate the books of such bank, institution, or corporation, and any officer having in charge the affairs of such bank, institution or corporation who shal- refuse when duly called upon for the purpose to allow his books to be investigated, shall be subject to indictment in the Franklin circuit court or the circuit court of the county wherein said bank, institution or corporation shall be located, and, upon conviction, shall be fined not less than $500 and not more than $1,000. The Commonwealth may, in the county wherein said bank, institution or corporation is located, institute an action in any court having civil, common-law jurisdiction of the amount involved for the recovery of the fine.

And the question being taken on the adoption of said amendment, it was decided in the negative.

180 The yeas and nays, being required thereon by Messrs. J. R. W. Smith and Bryan, were as follows, viz:

Those who voted in the affirmative were—

A. S. Berry,	C. M. Clay, Jr,	L. M. Martin,
J. W. Bryan,	Henry Dixon,	J. H. McDaniel,
W. J. Caudill,	T. S. Grundy,	J. T. Simon—9.

Those who voted in the negative were—

M. C. Alford,	G. G. Gilbert,	J. N. Price,
S. H. Boles,	R. G. Hays,	D. H. Smith,
R. A. Burnett,	S. E. Hill,	J. R. W. Smith,
W. W. Bush,	H. T. Kendall,	W. H. Taulbee,
F. M. Clements,	L. W. McKee,	R. S. Triplett,
John Feland,	W. F. Neat,	Robert Waliker,
W. H. Frederick,	J. W. Ogilvie,	J. H. Wilson—21.

Mr. J. R. W. Smith moved the following amendment as a substitute for said article, viz:

SEC. 1. That shares of stock in State and national banks and other

institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock shall be taxed 70 cents on each share thereof equal to $100, or on each $100 of stock therein owned by individuals, corporations or societies and said banks institutions and corporations shall, in addition, pay on each $100 of so much of their surplus, undivided profits or undivided accumulations as exceeds an amount equal to 20 per cent. of their capital stock, the same rate of taxation that is paid upon other property.

SEC. 2. The cashier of a bank and the treasurer of any other
181 institution or corporation whose stock is taxed shall, on the first day of July in each year, report to the auditor of public accounts the true amount of the capital stock, the true amount of surplus, undivided profits or undivided accumulations, and pay into the treasury the amount of tax due. The officer making the report shall affix his affidavit in substance as follows:

I, —— ——, swear (or affirm) that I am the — of — and that I have in the foregoing report truly and accurately reported the amount of capital stock and the amount of the surplus, undivided profits or undivided accumulations of said —. If such tax be not paid within twenty days after the first day of July, the auditor of public accounts may, in the name of the Commonwealth of Kentucky, institute an action in the Franklin circuit court, or in the court of any county where such bank institution or corporation is located for the recovery of the same, and if in such action a recovery be had judgement shall be rendered for the amount of the tax and ten per cent. thereon. If the cashier, treasurer or other officer fail to make the report as in this section provided, it shall be the duty of the auditor of public accounts to assess such bank, institution or corporation, and if such tax be not paid, the same may be recovered as herein provided.

SEC. 3. If any such bank, institution or corporation on the first day of July in any year has invested in the bonds or funds of the United States which are by law exempt from taxation more of its surplus, undivided profits or undivided accumulations than an
182 amount equal to twenty per cent. of its capital stock, the excess of the amount so invested over the amount equal to twenty per cent. of such capital stock shall be exempt from taxation for that year: Provided, such investment or investments were made in good faith and not for the purpose of avoiding taxation. The officer who makes the report provided for in this article shall also state in his affidavit that such investments, if any were made — in good faith and not for the purpose of avoiding taxation.

SEC. 4. That each of said banks and corporations, by its proper corporate authority with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof, may give its consent to the levying of said tax and agree to pay the same as herein provided, and to waive and release all rights under the act of Congress, or under charters granted by the legislature of this Commonwealth to a different mode or smaller rate of taxation; which consent and agreement to and with the Commonwealth of Kentucky shall be evidenced by a writing under the seal of the cor-

poration and delivered to the governor of this Commonwealth, and upon such agreement and consent being given, and in consideration thereof, such corporation and its shares of stock shall be exempt from all other taxation whatever so long as such tax shall be paid.

SEC. 5. The said banks, institutions and corporations may take the proceedings authorized by the second section of this article at any time until the meeting of the next General Assembly. Provided, they pay the tax provided in section 1 of this article from and after the passage of this act.

SEC. 6. This act shall be subject to the provisions of sec-
183 tion eight (8) of chapter sixty-eight (68) of the General Statutes.

SEC. 7. Nothing herein contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned and used for conducting their business, but the same may be taxed for county and municipal purposes at the same rate as other real estate is.

SEC. 8. If any bank, State or national, shall refuse or fail to pay the tax imposed by this act, or shall fail or refuse to make and give the consent and agreement as prescribed in section four (4), the shares of stock of such bank, institution or corporation, and its surplus, undivided accumulations and undivided profits shall be assessed as directed by section 2 of this article, and the same taxes, State, county and municipal, shall be imposed, levied and collected upon the assessed shares, surplus, undivided profits, undivided accumulations as is imposed on the assessed taxable property in the hands of individuals.

And the question being taken on the adoption of said amendment as a substitute, it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. J. R. W. Smith and Caudill, were as follows, viz:

Those who voted in the affirmative were—

M. C. Alford,	W. H. Frederick,	L. W. McKee,
A. S. Berry,	T. S. Grundy,	D. H. Smith,
J. W. Bryan,	R. G. Hays,	J. R. W. Smith,
W. J. Caudill,	H. T. Kendall,	W. H. Taulbee,
W. M. Cravens,	J. H. McDanell,	R. S. Triplett—16.
Henry Dixon,		

184 Those who voted in the negative were—

S. H. Boles,	John Feland,	J. N. Price,
R. A. Burnett,	G. G. Gilbert,	J. T. Simon,
W. W. Bush,	L. M. Martin,	Robert Walker,
C. M. Clay, Jr.,	W. F. Neat,	J. H. Wilson—14.
F. M. Clement,	J. W. Ogilvie,	

The question was then taken on the adoption of said article second as amended by Mr. J. R. W. Smith's substitute, and it was decided in the negative by the casting vote of Hon. James R. Hindman, lieutenant governor and speaker of the senate.

The yeas and nays, being required thereon by Messrs. Gilbert and J. R. W. Smith, were as follows, viz:

Those who voted in the affirmative were—

M. C. Alford,	T. S. Grundy,	D. H. Smith,
J. W. Bryan,	R. G. Hays,	J. R. W. Smith,
W. J. Caudill,	H. T. Kendall,	W. H. Taulbee,
W. M. Cravens,	J. H. McDanell,	R. S. Triplett—14.
W. H. Frederick,	L. W. McKee,	

Those who voted in the negative were—

A. S. Berry,	F. M. Clement,	J. W. Ogilvie,
S. H. Boles,	John Feland,	J. N. Price,
R. A. Burnett,	G. G. Gilbert,	J. H. Wilson,
W. W. Bush,	L. M. Martin,	J. R. Hindman—14.
C. M. Clay, Jr.,	W. F. Neat,	

Mr. Feland proposed the following amendment as a substitute for said article, viz:

SEC. 1. That shares of stock in State and national banks,
185 and in other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock shall be taxed — cents on each share thereof, equal to $100 of stock therein owned by individuals, corporations or societies.

SEC. 2. The cashier of a bank and treasurer of any other institution or corporation whose stock is taxed, shall on the first day of July in each year, report to the auditor of public accounts the true amount of the capital stock, and also what part thereof consists of real estate and tangible personal property, and where it is situated; also the names and residences of each of the stockholders and the amount of the stock so owned by each, and pay into the treasury the amount of tax due on said stock as provided in the foregoing section. If such tax be not paid, the cashier and his sureties shall be liable for the same and 20 per cent. upon the amount, and any State bank, institution or corporation shall thereby forfeit the privilege of its charter. The officer making the report shall attach thereto his affidavit of the correctness thereof.

SEC. 3. That portion of the stock of any such bank or other institution consisting of real property and tangible personal property shall be subject to county, municipal and other local taxation where situated, and at the valuation reported to the auditor, and shall be subject to exactly such taxation for those purposes, as other like property similarly situated.

SEC. 4. The — or *pro rata* of the stock not represented by such real estate or tangible personal property shall be subject to such
local taxation as follows, viz: The bank or other institution
186 shall pay the tax due on all stock owned by non-residents of the State at the place where the bank is located, and the individual owners of stock who are residents of the State shall pay the tax due on their respective shares of stock when they list such stock for the purposes of local taxation; it shall be valued at its face

value less the *pro rata* thereof embraced in real estate or tangible personal property, and shall be subject to the same rate of taxation and for the same purposes that other property is subject to at the place where it is paid.

SEC. 5. In order to collect the local taxes above provided for the auditor of public accounts shall, on or before the first day of September of each year, make out and send to each county clerk in the State a list of all the real estate and tangible personal property owned by any bank in the county, and the valuation put thereon by the officer reporting the same to him, and also all stock owned in the county, the number of shares owned by each person, and the *pro rata* thereof not embraced in said real estate and personal property, and also the number of shares of stock in any bank situated in the county owned by non-residents of the State of Kentucky.

SEC. 6. This statement shall be preserved by such county clerk, and by it the sheriff or other collecting officers of the counties, municipalities or other localities where such taxes are due shall collect and account for same in the same manner and when they collect and account for other such taxes.

Mr. Burnett moved to amend said proposed substitute as follows, viz:

187 Amend by striking out the word "face" before value and inserting in lieu thereof the word "actual."

And the question being taken thereon, it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Feland and Simon, were as follows, viz:

Those who voted in the affirmative were—

S. H. Boles,	Henry Dixon,	J. W. Ogilvie,
R. A. Burnett,	G. G. Gilbert,	J. T. Simon,
W. W. Bush,	S. E. Hill,	W. H. Taulbee,
C. M. Clay, Jr.,	H. T. Kendall,	Robert Walker,
F. M. Clement,	L. M. Martin,	J. H. Wilson—17.
W. M. Cravens,	W. F. Neat,	

Those who voted in the negative were—

M. C. Alford,	John Feland,	J. H. McDanell,
A. S. Berry,	W. H. Frederick,	J. N. Price,
J. W. Bryan,	T. S. Grundy,	J. R. W. Smith,
W. J. Caudill,	R. G. Hays,	R. S. Triplett—12.

The question was then taken on the adoption of the amendment proposed as a substitute by Mr. Feland as amended, and it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Boles and Bryan, were as follows, viz:

Those who voted in the affirmative were—

S. H. Boles,	H. T. Kendall,	W. H. Taulbee,
R. A. Burnett,	W. F. Neat,	Robert Walker,
W. W. Bush,	J. W. Ogilvie,	J. H. Wilson—11.
F. M. Clement,	J. T. Simon,	

188 Those who voted in the negative were—

M. C. Alford,	Henry Dixon,	S. E. Hill,
A. S. Berry,	John Feland,	L. M. Martin,
J. W. Bryan,	W. H. Frederick,	J. H. McDanell,
W. J. Caudill,	G. G. Gilbert,	J. N. Price,
C. M. Clay, Jr.,	T. S. Grundy,	J. R. W. Smith,
W. M. Cravens,	R. G. Hays,	R. S. Triplett—18.

Mr. Wilson moved to reconsider the vote by which the senate refused to adopt said article 2 as amended by Mr. J. R. W. Smith's amendment, adopted as a substitute therefor.

Mr. Martin moved to lay said motion on the table.

And the question being taken thereon, it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Gilbert and Taulbee, were as follows, viz:

Those who voted in the affirmative were—

S. H. Boles,	John Feland,	J. W. Ogilvie,
R. A. Burnett,	G. G. Gilbert,	J. N. Price,
W. W. Bush,	S. E. Hill,	J. T. Simon,
C. M. Clay, Jr.,	L. M. Martin,	Robert Walker—14.
F. H. Clement,	W. F. Neat,	

Those who voted in the negative were—

M. C. Alford,	T. S. Grundy,	J. R. W. Smith,
A. S. Berry,	R. G. Hays,	W. H. Taulbee,
J. W. Bryan,	H. T. Kendall,	R. S. Triplett,
W. J. Caudill,	J. H. McDanell,	J. H. Wilson—13.
W. H. Frederick,		

Mr. Burnett moved the following amendment as a substi-
189 tute for said article, viz:

SEC. 1. Be it enacted by the General Assembly of the Commonwealth of Kentucky, stock and shares of stock in State national banks and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, and other property and all real estate owned by the said banks and other institutions not included as part of their capital stock, shall be taxed according to its real value at the same rate as real estate, which shall be in full of all State tax. For the purpose of ascertaining such value the auditor may, at his option, investigate the books of such bank or institution; and any officer having in charge the affairs of such bank or institution, who shall refuse when duly called upon for the purpose, to allow his books to be investigated, shall be subject to indictment in the Franklin circuit court of the county wherein said bank or institution shall be located, and upon conviction shall be fined not less than five hundred dollars and not more than one thousand dollars. The Commonwealth may, in the county wherein said bank or institution is located, institute an action in any court having civil common-law jurisdiction of the amount involved for the recovery of such fine.

SEC. 2. The cashier of a bank and the treasurer of any other institution whose stock is taxed, shall, on the first day of July of each year, report the true cash value of said stock, other property and all real estate owned by the said bank or other institution not included as part of that capital stock, and pay into the treasury the amount of the tax due. If such tax be not paid, the cashier and his sureties shall be liable for the same, and twenty per cent., upon the amount; and any State bank or corporation shall thereby forfeit the privilege of its charter.

SEC. 3. At the same time the officers named in the last preceding section, shall forward to the auditor of public accounts the following oath or affirmation, which they shall take before some person authorized to administer an oath: I, —— ——, swear (or affirm) that I have reported the stock in the ——, other property and all real estate owned by the said ——, not included as part of the capital stock at the true cash value, according to my best judgment.

Mr. Gilbert moved to amend said proposed substitute as follows, viz:

But nothing in this act shall be understood to prevent counties and cities and towns from taxing the property of banks for local purposes at a rate not exceeding the rate imposed on other personal property in such county, city, or town.

And the question being taken thereof, it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Bryan and Price, were as follows, viz:

Those who voted in the affirmative were—

S. H. Boles,	S. E. Hill,	J. N. Price,
J. W. Bryan,	L. M. Martin,	J. T. Simon,
C. M. Clay, Jr.,	J. H. McDanell,	D. H. Smith,
G. G. Gilbert,	W. F. Neat,	Robert Walker—14.
T. S. Grundy,	J. W. Ogilvie,	

Those who voted in the negative were—

M. C. Alford,	Henry Dixon,	L. W. McKee,

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A. S. Berry,	John Feland,	J. R. W. Smith,
W. W. Bush,	W. H. Frederick,	W. H. Taulbee,
W. J. Caudill,	R. G. Hays,	R. S. Triplett,
W. M. Cravens,	H. T. Kendall,	J. H. Wilson—16.
F. M. Clements.		

The question was then taken on the adoption of the amendment proposed by Mr. Burnett as a substitute for said article, and it was decided in the negative.

The yeas and nays, being required thereon by Messrs. J. R. W. Smith and Ogilvie, were as follows, viz:

Those who voted in the affirmative were—

A. S. Berry,	W. F. Neat,	W. H. Taulbee,
S. H. Boles,	J. W. Ogilvie,	Robert Walker,
R. A. Burnett,	J. T. Simon,	J. H. Wilson—10.
H. T. Kendall,		

Those who voted in the negative were—

M. C. Alford,	John Feland,	L. M. Martin,
J. W. Bryan,	W. H. Frederick,	J. H. McDanell,
W. W. Bush,	G. G. Gilbert,	L. W. McKee,
W. J. Caudill,	T. S. Grundy,	J. N. Price,
C. M. Clay, Jr.,	R. G. Hays,	J. R. W. Smith,
W. M. Cravens,	S. E. Hill,	R. S. Triplett—19.
Henry Dixon,		

Mr. Feland moved to reconsider the vote by which the senate rejected the amendment as amended, proposed by him as a substitute for said article.

Mr. Bryan moved to lay said motion on the table.

And the question being taken thereon, it was decided in
192 the affirmative.

The yeas and nays, being required thereon by Messrs. J. R. W. Smith and Bush, were as follows, viz:

Those who voted in the affirmative were—

M. A. Alford,	W. H. Frederick,	J. H. McDanell,
J. W. Bryan,	G. G. Gilbert,	L. W. McKee,
W. J. Caudill,	T. S. Grundy,	J. T. Simon,
C. M. Clay, Jr.,	R. G. Hays,	J. R. W. Smith,
W. M. Cravens,	S. E. Hill,	R. S. Triplett—17.
Henry Dixon,	L. M. Martin,	

Those who voted in the negative were—

A. S. Berry,	John Feland,	J. N. Price,
S. H. Boles,	H. T. Kendall,	W. H. Taulbee,
R. A. Burnett,	W. F. Neat,	Robert Walker,
W. W. Bush,	J. W. Ogilvie,	J. H. Wilson—13.
F. M. Clement,		

Mr. Boles moved that the senate do now adjourn.

And the question being taken thereon, it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Gilbert and J. R. W. Smith, were as follows, viz:

Those who voted in the affirmative were—

S. H. Boles,	H. T. Kendall,	J. R. W. Smith,
John Feland,	J. W. Ogilvie,	Robert Walker—6.

Those who voted in the negative were—

M. C. Alford,	G. G. Gilbert,	W. F. Neat,
A. S. Berry,	T. S. Grundy,	J. N. Price,

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J. W. Bryan, S. E. Hill, J. T. Simon,
C. M. Clay, Jr., J. H. McDanell, W. H. Taulbee,
W. J. Caudill, L. M. Martin, D. H. Smith,
F. M. Clement, L. W. McKee, J. H. Wilson—19.
W. H. Frederick,

Mr. Bryan proposed to amend said article as follows, viz:

SEC. 1. Amend article 2 by striking out of section 1, line 3, "75," and inserting "70."

SEC. 2. Amend line 9 of said section by striking out the word "10" and inserting "20."

SEC. 3. Amend section 6 by inserting, after the word "shall," in first line, the words "not for ten years."

Mr. Bryan moved a division of the question on said amendment.

And the question being taken thereon, it was decided in the affirmative.

The question was then taken on the first section of said amendment, and it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Gilbert and Feland, were as follows, viz:

Those who voted in the affirmative were—

M. C. Alford, Henry Dixon, L. M. Martin,
J. W. Bryan, W. H. Frederick, J. H. McDanell,
W. J. Caudill, T. S. Grundy, L. W. McKee,
C. M. Clay, Jr., R. G. Hays, J. R. W. Smith,
W. M. Cravens, S. E. Hill, R. S. Triplett—15.

Those who voted in the negative were—

A. S. Berry, G. G. Gilbert, J. T. Simon,
S. H. Boles, H. T. Kendall, D. H. Smith,

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R. A. Burnett, W. F. Neat, W. H. Taulbee,
W. W. Bush, J. W. Ogilvie, Robert Walker,
F. M. Clement, J. N. Price, J. H. Wilson—16.
John Feland,

Mr. Feland moved that the senate do now adjourn.

And the question being taken thereon, it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Simon and Bryan, were as follows, viz:

Those who voted in the affirmative were—

S. H. Boles, John Feland, J. W. Ogilvie,
R. A. Burnett, G. G. Gilbert, D. H. Smith,
W. W. Bush, H. T. Kendall, Robert Walker,
F. M. Clement, W. F. Neat, J. H. Wilson—12.

Those who voted in the negative were—

M. C. Alford,	W. H. Frederick,	L. W. McKee,
A. S. Berry,	T. S. Grundy,	J. N. Price,
J. W. Bryan,	R. G. Hays,	J. T. Simon,
W. J. Caudill,	S. E. Hill,	J. R. W. Smith,
C. M. Clay, Jr.,	L. M. Martin,	W. H. Taulbee,
W. M. Cravens,	J. H. McDanell,	R. S. Triplett—19.
Henry Dixon,		

Mr. D. H. Smith moved that the further consideration of said bill and proposed amendments be postponed until tomorrow at 11 o'clock a. m.

And the question being taken thereon, it was decided in the negative.

195 Mr. Wilson moved that the senate do now adjourn.

And the question being taken thereon, it was decided in the negative.

Mr. Simon moved that the session of the senate be extended until the article under consideration was disposed of.

And the question being taken thereon, it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Bush and D. H. Smith, were as follows, viz:

Those who voted in the affirmative were—

M. C. Alford,	T. S. Grundy,	L. W. McKee,
J. W. Bryan,	S. E. Hill,	J. N. Price,
W. J. Caudill,	L. M. Martin,	J. T. Simon,
C. M. Clay, Jr.,	J. H. McDanell,	R. S. Triplett—13.
Henry Dixon,		

Those who voted in the negative were—

A. S. Berry,	John Feland,	J. W. Ogilvie,
S. H. Boles,	W. H. Frederick,	D. H. Smith,
R. A. Burnett,	G. G. Gilbert,	J. R. W. Smith,
W. W. Bush,	R. G. Hays,	W. H. Taulbee,
F. M. Clements,	H. T. Kendall,	Robert Walker,
W. M. Cravens,	W. F. Neat,	J. H. Wilson—18.

Mr. Clay moved the previous question.

Mr. D. H. Smith moved that the senate do now adjourn.

And the question being taken thereon, it was decided in the affirmative.

196 The yeas and nays, being required thereon by Messrs. D. H. Smith and Feland, were as follows, viz:

Those who voted in the affirmative were—

A. S. Berry,	John Feland,	J. W. Ogilvie,
S. H. Boles,	G. G. Gilbert,	D. H. Smith,
R. A. Burnett,	T. S. Grundy,	J. R. W. Smith,
W. W. Bush,	R. G. Hays,	W. H. Taulbee,
F. M. Clements,	H. T. Kendall,	Robert Walker,
W. M. Cravens,	W. F. Neat,	J. H. Wilson—18.

Those who voted in the negative were—

M. C. Alford,	W. H. Frederick,	L. W. McKee,
J. W. Bryan,	S. E. Hill,	J. N. Price,
W. J. Caudill,	L. M. Martin,	J. T. Simon,
C. M. Clay, Jr.,	J. H. McDanell,	R. S. Triplett—13.
Henry Dixon,		

Mr. E. H. Smith moved to amend section 22 by striking from lines 16 and 17 the words "within five days thereafter."

And the question being taken thereon, it was decided in the negative.

Section- 22 and 23 were each then read and respectively adopted.

Article 6 was then taken up for consideration.

Section 1 of said article was read and adopted.

Mr. Kendall moved to amend section 2 of said article by striking out the words "fair" and "and," in the fourth line, and adding the words "cash."

And the question being taken thereon, it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs.
197 Kendall and Caudill, were as follows, viz:

Those who voted in the affirmative were—

A. R. Byers,	R. G. Hays,	F. D. Rigney,
W. J. Caudill,	H. T. Kendall,	D. H. Smith,
W. M. Cravens,	J. H. McDanell,	R. S. Triplett,
W. H. Frederick,	W. F. Neat,	J. H. Wilson—13.
T. S. Grundy,		

Those who voted in the negative were—

S. H. Boles,	F. M. Clement,	J. W. Ogilvie,
J. W. Bryan,	Henry Dixon,	J. N. Price,
R. A. Burnett,	S. E. Hill,	J. R. W. Smith,
C. M. Clay, Jr.,	L. W. McKee,	W. H. Taulbee—12.

Mr. Wilson moved to amend said bill as follows, viz:

Strike out after "swear," in third line, to include "partiality," in fifth line.

And the question being taken thereon, it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Wilson and Caudill, were as follows, viz:

Those who voted in the affirmative were—

A. R. Byers,	J. D. Harris,	R. S. Triplett,
W. J. Caudill,	R. G. Hays,	J. H. Wilson—8.
W. M. Cravens,	J. N. Price,	

Those who voted in the negative were—

S. H. Boles,	T. S. Grundy,	J. W. Ogilvie,
R. A. Burnett,	S. E. Hill,	F. D. Rigney,
C. M. Clay, Jr.,	M. T. Kendall,	D. H. Smith,

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Henry Dixon, J. H. McDanell, J. R. W. Smith—13.
W. H. Frederick,

The question was then taken on the adoption of said section as amended, and it was decided in the affirmative.

Mr. Sparks moved to reconsider the vote by which section 21 of article 5 was adopted.

And the question being taken thereon, it was decided in the affirmative.

Mr. Sparks moved to amend said section by striking out of the second and third lines the words "nor any room opening into the same."

And the question being taken thereon, it was decided in the affirmative.

The question was then taken on the adoption of said section 21 of article 5 as amended, and it was decided in the affirmative.

Section 3 of article 6 was then read and adopted.

Mr. Clay moved to amend section 4 of said article 6 as follows, viz:

Strike out "fifteenth day of September" and insert in lieu thereof "tenth day of January," and strike out "fifteenth of December" and insert in lieu thereof "first of June."

And the question being taken on the adoption of said amendment, it was decided in the negative.

The yeas and nays, being required thereon by Messrs. Kendall and D. H. Smith, were as follows, viz:

Those who voted in the affirmative were—

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C. M. Clay, Jr.,	W. H. Frederick,	W. F. Neat,
F. M. Clement,	T. S. Grundy,	J. N. Price,
Henry Dixon,	J. H. McDanell,	F. D. Rigney—9.

Those who voted in the negative were—

A. S. Berry,	W. J. Caudill,	D. H. Smith,
S. H. Boles,	R. G. Hays,	J. R. W. Smith,
J. W. Bryan,	S. E. Hill,	W. H. Taulbee,
R. A. Burnett,	H. T. Kendall,	R. S. Triplett,
A. R. Byers,	J. W. Ogilvie,	J. H. Wilson—15.

Sections 4, 5, 6, and 7 of said article 6 were each then read and adopted.

Mr. Boles moved to amend section 8 of article 6 by striking out one and a half cents in line 12 and inserting in lieu thereof one-half cent.

Mr. Neat proposed the following amendment as a substitute for said section, viz:

The assessor shall, after he has returned his tax book and the same has been corrected by the board of supervisors, present to the county court his account, verified by affidavit, which account shall

be certified by said court to the auditor. The amount allowed shall be fifteen cents for each person's list of taxable property, and the same shall be paid by the treasurer upon the warrant of the auditor.

Mr. Bryan moved to amend said section as follows, viz:

Amend section 8, article 6, by striking out of line 10 the words "one cent" and inserting in lieu thereof "two and one-half cents."

200 Mr. Hill moved to amend said section as follows, viz:

Amend section 8, article 6, as follows: Strike out all of section 8, beginning with the word "four" in the ninth line of said section and add in lieu thereof the following: "Six cents on the one hundred on the first million, two cents on the one hundred dollars on the excess over one million and not exceeding three millions, and one cent on the one hundred on the excess over three millions, and two cents a tithe for every tithe returned by him."

Mr. Cravens moved to amend said section as follows, viz:

Amend by striking out all of section 8, article 6, commencing with the word "four" in the ninth line to the close of said section and inserting in lieu thereof "fifteen cents a list for a head and property list combined and five cents for a head with no property."

Mr. Caudill moved to amend said section as follows, viz:

Amend article 6, section 8, by striking out "four cents on the one hundred dollars" and inserting "five cents on the one hundred dollars on the first million and under."

Mr. Ogilvie moved to amend the substitute proposed by Mr. Neat for said section as follows, viz:

Amend by striking out "fifteen cents" and inserting "twelve and a half cents."

And the question being taken thereon, it was decided in the negative.

Mr. Boles moved to amend said proposed substitute by adding thereto the following proviso, viz:

Provided, there shall be but one charge for the tax-list of any one tax-payer.

And the question being taken thereon, it was decided in the

201 affirmative.

The question was then taken on the adoption of the amendment, as amended, proposed by Mr. Neat as a substitute for said section 8 of said article 6, and it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Grundy and D. H. Smith, were as follows, viz:

Those who voted in the affirmative were—

S. H. Boles,	W. H. Cravens,	W. F. Neat,
R. A. Burnett,	Henry Dixon,	J. W. Ogilvie,
A. R. Byers,	T. S. Grundy,	J. N. Price,
W. J. Caudill,	H. T. Kendall,	F. D. Rigney,
C. M. Clay, Jr.,	J. H. McDanell,	J. R. W. Smith,
F. M. Clement,	L. W. McKee,	J. H. Wilson—18.

Those who voted in the negative were—

W. H. Frederick,	D. H. Smith,	W. H. Taulbee,
R. C. Hays,	E. R. Sparks,	R. S. Triplett—7.
S. E. Hill,		

Mr. Clay moved to reconsider the vote by which said substitute was adopted.

Mr. Clement moved to lay said motion on the table.

And the question being taken thereon, it was decided in the affirmative.

The question was then taken on the adoption of said section, as amended, and it was decided in the affirmative.

Mr. Clay moved to amend section 9 as follows, viz:

Strike out in the sixth line "truth and value of the same" and insert in lieu thereof the words "the accuracy of his list."

202 And the question being taken thereon, it was decided in the affirmative.

The yeas and nays, being required thereon by Messrs. Caudill and Wilson, were as follows, viz:

Those who voted in the affirmative were—

S. H. Boles,	T. S. Grundy,	J. N. Price,
J. W. Bryan,	J. H. McDanell,	F. D. Rigney,
R. A. Burnett,	L. W. McKee,	D. H. Smith,
C. M. Clay, Jr.,	W. F. Neat,	J. R. W. Smith,
F. M. Clement,	J. W. Ogilvie,	E. R. Sparks—16.
W. H. Frederick,		

Those who voted in the negative were—

A. R. Byers,	S. E. Hill,	R. S. Triplett,
W. J. Caudill,	H. T. Kendall,	J. H. Wilson—8.
R. G. Hays,	W. H. Taulbee,	

Mr. Hays moved to amend said section by striking out the word "fair," in the eighth line, and inserting in lieu thereof the word "full."

And the question being taken thereon, it was decided in the affirmative.

Mr. D. H. Smith moved to amend said section as follows, viz:

Amend section 9 by inserting after the word "assessor," in lines 16 and 17 thereof, the words "and also the names of any persons duplicated by the assessor."

And the question being taken thereon, it was decided in the affirmative.

203 The question was then taken on the adoption of said section as amended, and it was decided in the affirmative.

And then the senate took a recess until 4 o'clock p. m.

CITIZENS' SAVINGS BANK, Appellant,
vs.
CITY OF OWENSBORO, &c., Appellees. } Supersedeas Bond.

Upon an appeal from a judgement of the Daviess circuit court rendered 2nd day of March, 1895.

Whereas said appellant, Citizens' Savings Bank, having prayed an appeal from the judgement of the Daviess circuit court, rendered at its January term, 1895, against it in favor of the judgement sustaining the demurrer and dismissing the petition and dissolving the injunction and assessing damages and rendering judgement against it for two hundred and seven dollars and ninety-two cents damages and for costs, and the appellants desire to supersede the appellees' said judgement above mentioned:

Now we, Citizens' Savings Bank and J. Q. Haynes, surety, do hereby covenant to and with the appellees, City of Owensboro and A. M. C. Simmons, &c., that the appellant will pay to the appellees all costs and damages that may be adjudged against the appellant on the appeal, and also that they will satisfy and perform the appellees' judgement above stated, in case it shall be affirmed, and any judgement or order to be rendered by the inferior court, not exceeding in amount or value the judgement aforesaid.

Witness our hands this the 5th day of March, 1895.

CITIZENS' SAVINGS BANK,
By J. Q. HAYNES, *Pres't.*
J. Q. HAYNES.

204 Att.: J. A. LYDDANE, *Cl'k D. C. C.*

Filed 5th day of March, 1895.
Attest: J. A. LYDDANE, *Clerk.*

STATE OF KENTUCKY, *sct:*

Daviess Circuit Court.

I, J. A. Lyddane, clerk of the Daviess circuit court, certify that the foregoing 200 pages contain a true, full, and complete transcript of the record mentioned in the caption and now on file in my office.

Given under my hand, as clerk of the Daviess circuit court, this the 12th day of March, 1895.

J. A. LYDDANE,
Clerk Daviess Circuit Court.

Upon which transcript appears the following statement;

Kentucky Court of Appeals.

CITIZENS' SAVINGS BANK, Appellant,
versus
CITY OF OWENSBORO and A. M. C. SIMMONS, City Tax Collector of the City of Owensboro, Appellees. } Statement.

The appellant, Citizens' Savings Bank, states that it is the appellant on this appeal and The City of Owensboro and A. M. C.

Simmons, city tax collector of the city of Owensboro, are the appellees; that the judgement appealed from was rendered at
205 the January term, 1895, of the Daviess circuit court, and on March 2nd, 1895, and it may be found on pages 60, 61, and 62 of the record. No summons is desired on this appeal.

CITIZENS' SAVINGS BANK, *Appellant*,
By REUBEN A. MILLER, *Att'y*.

Afterwards, at a court of appeals held in and for Kentucky, at the capitol, in the city of Frankfort, on the 19th day of November, 1895, the following order was entered:

CITIZENS' SAVINGS BANK
vs.
CITY OF OWENSBORO, &c. } Daviess.

* * * * * * *

Ordered that this cause be and the same is continued for oral argument.

Afterwards, at a court of appeals held, as aforesaid, on the 27th day of March, A. D. 1896, the following order was made herein:

CITIZENS' SAVINGS BANK
vs.
CITY OF OWENSBORO, &c. } Daviess.

* * * * * * *

By agreement filed this cause is submitted, with leave to file briefs by September 1st, 1896.

Afterwards, at a court of appeals held, as aforesaid, on the 24th day of March, A. D. 1897, the following orders and judgments were entered:

206 CITIZENS' SAVINGS BANK, Appellant,
vs.
CITY OF OWENSBORO, &c., Appellees. } Appeal from the Daviess Circuit Court.

* * * * * * *

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, and that the appellee recover of the appellant ten per cent. damages on the amount of the judgment superseded herein.

Which is ordered to be certified to said court.

It is further considered that appellees recover of appellant their cost expended herein.

(Judges Hazelrigg, Burnam, & Du Relle dissenting. Judge Du Relle delivered dissenting opinion.)

On the same day, to wit, March 24th, 1897, the majority of the court, through Judge Paynter, delivered the following opinion:

Opinion.

These cases were pending, either in this or the lower courts, when the cases known as the "bank tax cases" were decided (97 Ky., 590; 17 Ky. Law Rep., 465). From that opinion the writer of this one dissented, in which Judges Lewis and Guffy concurred. The questions of law involved in these cases are similar to those in the cases mentioned. We therefore re-examine and reconsider the question as to whether the opinion of the majority shall stand as the law regulating the taxation of the banks of the State.

The conclusion which we have reached is that the shares of stock, etc., in the banks are subject to county and municipal taxation; hence the opinion referred to should be and is overruled.
207 So is the case of Franklin County Court *v.* Deposit Bank of Frankfort, 87 Ky., 370, overruled for the reasons which will hereafter appear.

This conclusion of the court renders it necessary to discuss the questions of law in the other "bank tax cases," and we will, consequently, use parts of the dissenting opinion without quotation marks. There were four banks in the State, commonly designated as the "old banks," and they were the Bank of Kentucky, chartered in 1834; the Northern bank, in 1835; the Bank of Louisville, in 18—; the Farmers' Bank of Kentucky, in 1850. The charters of the first three banks named were extended by the same act of the General Assembly in 1858, and each of the charters was extended by subsequent legislative acts. In neither of the acts of extension is reference made to the act of 1856, nor does either contain express limitation upon the taxing power of the State. The charter and amendments of the Farmers' Bank of Kentucky were extended by an act of the General Assembly in 1876, but the right to repeal the charter and its amendments, "either by general or special act," was reserved in the act. The charters of all banks operating under charters were granted after the act of 1856. This was the situation when the revenue bill of 1886, generally called the "Hewitt bill," became a law. The provision of it relating to the taxation of banks is article 2, chapter 92, General Statutes, and reads as follows:

"SECTION 1. That shares of stock in State and national banks, and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock shall be taxed seventy-five cents on each share thereof equal to one hundred
208 dollars, or on each one hundred dollars of stock therein owned by individuals, corporations or societies, and said banks, institutions and corporations shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided surplus, undivided profits or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, which shall be in full of all tax, State, county and municipal."

"SECTION 4. That each of said banks, institutions and corporations, by its corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meet-

ing thereof, may give its consent to the levying of said tax, and agree to pay the same, as herein provided, and to waive and release all right under the acts of Congress, or under the charters of the State banks, to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank, and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of such bank."

"SECTION 5. The said banks may take the proceeding authorized by section 4 of this act at any time until the meeting of the next General Assembly: Provided, they pay the tax provided in section 1, from the passage of this act."

"SECTION 7. If any bank, State or national, shall fail or refuse to pay the tax imposed by this act, or shall fail or refuse to
209 make the consent and agreement as prescribed in section 4, the shares of stock of such bank, institution or corporation, and its surplus, undivided accumulations and undivided profits shall be assessed as directed by section 2 of this act, and the taxes, State, county and municipal, shall be imposed, levied and collected upon the assessed shares, surplus, undivided profits, undivided accumulations, as is imposed on the assessed taxable property in the hands of individuals: Provided, that nothing herein contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned and used by said banks or corporations for conducting their business, but the same may be taxed for county and municipal purposes as other real estate is taxed."

"SECTION 6. This act shall be subject to the provisions of section eight (8), chapter sixty-eight (68) of the General Statutes."

Section 8 of chapter 68, referred to in section 6 above, is as follows: "All charters and grants of or to corporations, or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: Provided, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

These statutes were in force when the constitutional convention met to frame the present constitution. This instrument was adopted on the 28th day of September, 1891.

210 Section 174 is as follows: "All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this constitution, and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the General Assembly from providing for taxation based on income, license, or franchise."

Section 175 provides: "The power to tax property shall not be

surrendered or suspended by any contract or grant to which the Commonwealth shall be a party."

In pursuance of these provisions of the constitution the General Assembly enacted laws under which the taxes were levied on the shares of the capital stock, etc., for county and municipal purposes, about the imposition of which these controversies arose. The General Assembly, by the laws imposing the taxes for county and municipal purposes, reduced the amount which the banks had been paying the State so as to only collect 42½ cents on each $100 of the value of the property interest in the bank assessed. This is the rate of taxation paid by individual property. The rate under the Hewitt bill was 75 cents on each share of the capital stock equal to $100 or on each $100 of stock therein, and, in addition thereto, pay upon each $100 of so much of their surplus, undivided surplus, undivided profits, or undivided accumulations as exceeded an amount equal to 10 per cent. of their capital stock, which was in full of all tax, State, county, and municipal. We assume the banks filed their written consent as provided for in section 4, article 2, chapter
211 92, General Statutes. It is claimed that the banks have irrevocable contracts with the State from which it cannot recede without their consent; that the constitutional convention and the State had no power to change the mode or fix a higher rate of taxation than was imposed in the act of 1886.

It is gravely asserted that when those who gave the State its organic law and statutory law seek to impose the burden of taxation equally on those who should bear it, a contract is attempted to be violated, and the State is acting in bad faith. We fully realize the wisdom of that provision of the Federal Constitution which declares that no State shall pass any law "impairing the obligation of contracts." The State should deal honestly with its citizens, thus setting an example worthy of the imitation of those who constitute the State.

It has been well said: "A compact lies at the foundation of all national life. Contracts mark the progress of communities in civilization and prosperity. They guard as far as is possible against the fluctuations in human affairs. They seek to give stability to the present and certainty to the future. They gauge the confidence of man in the truthfulness and integrity of his fellow-man. They are the springs of business, trade, and commerce. Without them society could not go on. Spotless faith in their fulfillment honors alike communities and individuals." While this is true, we feel that the fervid eloquence of an orator could not in too earnest terms plead the justness of this demand of the citizen that each integral part of the State shall bear its fair proportion of the burdens of the State.

212 The one who seeks to show that it is just to grant the privilege of exemption from taxation except in consideration of public service has assumed a vast undertaking. That State which refuses to surrender one of its attributes of sovereignty—the power to impose taxes on corporations or individuals—demonstrates its regardful care of the rights of its citizens, and manifests its purpose to

preserve its existence. When the State has in express terms declined to surrender any part of its sovereignty, and seeks to exercise its prerogative, we are unable to see the slightest foundation for the imputation of bad faith. From the Dartmouth College case to the present time the Supreme Court of the United States has uniformly held that whenever the legislature granting the charter reserved the right to amend or repeal it, either by so providing in the charter or by a general law, the right to amend or repeal such charter exists, and to do so is not to impair the obligation of a contract, the charter being accepted with the full understanding that the right to repeal is part of the contract, and to the exercise of which right the grantee has consented. Many of the States, after the Dartmouth College case, began to realize the importance of reserving the right to control corporate organizations, which from time to time were being created, and, to make sure such power was being reserved, they passed general laws expressly reserving such powers, which statutes became a part of every act of incorporation as fully as if written therein, unless a different purpose was therein plainly expressed. The legislature of this State, being fully aware of the importance of such action as would reserve the right to
213 amend or repeal acts of incorporation, passed what is known as the "statute of 1856," which is section 8, chapter 68, General Statutes. It seems so plain that charters and grants, since the 14th of February, 1856, are subject to amendment or repeal at the will of the legislature, unless a contrary intent is plainly expressed therein, that it is needless to discuss it. The Supreme Court of the United States has not only so held, but this court has done likewise in every case that has been before it. Acts of the character of the act of 1856 have uniformly been adjudged to be a condition upon which every charter of a corporation subsequently granted was held, and upon which every amendment or modification was made, and to be as much a part of the charters as if incorporated into them. Any other interpretation would render the statute inoperative, and wholly deprive it of its power to accomplish the purpose of its enactment.

In 1841 South Carolina passed a statute substantially the same as the statute of 1856. The Northeastern Railroad Co. was incorporated in 1851. In 1855 an act was passed to amend its charter, the amendment exempting the railroad company from taxation. In 1868 the State adopted a new constitution, in which it was declared that the property of the corporations then existing or thereafter created should be taxed. The legislature of the State passed an act to enforce that provision of the constitution.

The question involved in Tomlinson *v.* Jessup, 15 Wall., 454, was as to the enforcement of such legislation. Justice Field, in delivering the opinion of the court in the case, said: "It is true that the charter of the company, when accepted by the corporators, constituted a contract between them and the State, and that the
214 amendment, when accepted, formed a part of the contract from that date and was of the same obligatory character, and it may be equally true, as stated by counsel, that the exemption from

taxation added greatly to the value of the stock of the company and induced the plaintiff to purchase the shares held by him; but these considerations cannot be allowed any weight in determining the validity of the subsequent taxation. The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed or as subsequently modified, or its entire revocation. The original corporators or subsequent stockholders took their interests with knowledge of the existence of this power and of the probability of its exercise at any time in the discretion of the legislature. The object of the reservation and of similar reservations in other charters is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contracts with corporations which, without that provision, would be irrepealable and protected from any measures affecting its obligation. There is no subject over which it is of greater moment for the State to preserve its power than that of taxation. Immunity from taxation, constituting in these cases a part of the contract with the Government, is, by the reservation of power such as is contained in the law of 1841, subject to be revoked equally with any other provision of the charter whenever the legislature may deem
215 it expedient for the public interests that the revocation shall be made. The reservation affects the entire relation between the State and the corporation, and places under legislative control all rights, privileges, and immunities derived by its charter directly from the State." The same doctrine is enunciated in Railroad Co. *v.* Maine, 96 U. S., 499; Railroad Co. *v.* Georgia, 98 U. S., 359; Hoge *v.* Railroad Co., 99 U. S., 348; Greenwood *v.* Freight Co., 105 U. S., 13, 21; Waterworks *v.* Schottler, 110 U. S., 347–352; Close *v.* Cemetery Co., 107 U. S., 466–476; Louisville Gas Co. *v.* Citizens' Gaslight Co., 115 U. S., 683–696; Gibbs *v.* Gas Co., 130 U. S., 396–408; Sioux City St. R'y Co. *v.* Sioux City, 138 U. S., 98–108.

It was said in Hamilton Gaslight & Coke Co. *v.* Hamilton City, 146 U. S., 271: "This reservation of power to alter or revoke a grant of special privileges necessarily became a part of the charter of every corporation formed under the general statute providing for the formation of corporations. A legislative grant to a corporation of special privileges, if not forbidden by the Constitution, may be a contract; but where one of the conditions of the grant is that the legislature may alter or revoke it, a law altering or revoking or which has the effect to alter or revoke the exclusive character of such privileges cannot be regarded as one impairing the obligation of the contract, whatever may be the motive of the legislature or however harshly such legislation may operate in the particular case upon the corporation or parties affected by it. The corporation, by accepting the grant subject to the legislative power so reserved by the constitution, must be held to have assented to such reservation.

"In Greenwood *v.* Freight Co., 105 U. S., 13, the question
216 was as to the scope and effect of a clause in a general statute of Massachusetts, providing that every act of incorporation

passed after a named day 'shall be subject to amendment, alteration, or repeal at the pleasure of the legislature.' This court, referring to that clause, said: 'Such an act may be amended—that is, it may be changed by additions to its terms or by qualifications of the same. It may be altered by the same power and it may be repealed. What is it that may be repealed? It is the act of incorporation. It is this organic law on which the corporate existence of the company depends, which may be repealed so that it shall cease to be a law, or the legislature may adopt the milder course of amending the law in matters which need amendment or altering it when it needs substantial change. All this may be done at the pleasure of the legislature. That body need give no reason for its action in the matter. The validity of such action does not depend on the necessity for it or on the soundness of the reason which prompted it.' The words 'at the pleasure of the legislature' are not in the clauses of the constitution of Ohio or in the statutes to which we have referred, but the general reservation of the power to alter, revoke, or repeal a grant of special privileges necessarily implies that the power may be exerted at the pleasure of the legislature."

It must be conceded from the authorities cited the Supreme Court of the United States has repeatedly held that the legislatures of the States have the power, when reserved in the charter or by general law, to change or repeal acts granting corporate privileges or
217 franchises. The decisions of this court are in accord with these opinions. The case of Griffin *v.* Insurance Co., 3 Bush., 592, has been quoted with approval in the case of Water Co. *v.* Clark, 143 U. S., 14, and in that case the court held that in all cases of charters or grants of corporate franchises where the intention of the legislature was not "plainly expressed" not to exercise the power reserved by the statute of 1856 to amend or repeal at the will of the legislature, such charters or grants must be read as if all the provisions of the act of 1856 were incorporated in them. Judge Robertson, in delivering the opinion in Griffin *v.* Insurance Co., 3 Bush., 595, said: "Then was the general reservation of power, like a special reservation in the charter itself, a part of the contract, or was the contract made subject to it, and the obligation defined or modified by it? We think so; and whatever might be thought of the policy of such legislation or of the policy or justice of the repealing statute, over which the judiciary has no jurisdiction, our conclusion as to the mere power of repeal is, as we think, sustained by reason and abundant authority. All contracts, except such as are municipal, are made subject to law and their obligation is defined by the *lex loci contractus*. Why should the contract in this case be excepted? Such exception would be unreasonable, and the authorities fortify the reason."

In the case of Cumberland & O. R. Co. *v.* Barren County Court, 10 Bush., 604, in reference to the act of 1856, the court said: "The act was intended to preserve to the State control over all acts of incorporation thereafter passed. Experience has demonstrated the propriety of, if not the absolute necessity for, such a reserva-
218 tion of power, and it would be a manifest disregard of the

clearly expressed will of the legislature for the courts to resort to technical rules of construction or finely drawn legal implications to escape the effect of the plain declaration that all charters of and grants to corporations shall be subject to amendment and repeal unless a contrary intent be plainly expressed."

We conclude that the legislature in 1886, when it passed the revenue bill, *and* had the right to amend or repeal at will all charters and grants of or to corporations or amendments thereof enacted or granted since the 14th of February, 1856, unless a contrary intent was plainly expressed."

The national banks were subject to have the same tax imposed on their shares of stock as are imposed on State banks doing business under charters granted since the 14th of February, 1856. Their real estate is subject to taxation; their shares of stock may be taxed at their actual value, but no greater rate of taxation shall be collected on them than is assessed upon the moneyed capital in the hands of individual citizens of the State. In the case of Covington City Nat. Bank *vs.* City of Covington, 21 Fed., 491, Justice Mathews, discussing this subject, said: "When, therefore, a statute taxes the shares of a stockholder at their actual or market or full value, that necessarily includes such value beyond its par or nominal value as is imparted to the stock by the fact that the bank has a surplus fund or undivided profits." The interest which Congress has left subject to taxation by the States under the limitations prescribed, and which is a distinct, independent interest in prop-
219 erty held by the shareholder, like any other property that may belong to him, is that interest, as defined in Van Allen *v.* The Assessors, 3 Wall., 573, which entitles him to participate in the net profits earned by the bank in the employment of its capital during the existence of its charter in proportion to the number of its shares, and, upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts;" and (page 587) "it includes for taxation the whole interest of the shareholder, such as would pass to the purchaser of the share on a transfer of his certificate.

So when a State law taxes shares of national bank stock it taxes the same interest of the shareholder that he would transfer on a sale. The State may tax them at their actual or at their market value or at any other rate of appraisement which does not violate the act of Congress."

To the same effect are the cases of People *v.* Commissioners of Texas, 94 U. S., 415; Mercantile Bank *v.* City of New York, 121 U. S., 138. In the latter case the court said (121 U. S., 835): "The main purpose, therefore, of Congress in fixing limits to State taxation on investments in the shares of national banks was to render it impossible for the State in levying such a tax to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

The legislature of Pennsylvania passed a statute taxing
220 the shares in national banks on an assessed value thereof for county school, municipal, and local purposes. The Supreme Court, in Hepburn *v.* School Directors, 23 Wall., 480, held the statute valid. It has been decided that it is competent for the States to tax the shares of national bank stock, notwithstanding the capital of the bank was invested in bonds of the United States, which were not subject to taxation (National Bank *v.* Kentucky, 9 Wall., 353). The national banking law does not prevent the State from taxing stock in national banks at a higher rate than that imposed on the most favored banks operating under the laws of the State. This question was fully determined in Lionberger *v.* Rouse, 9 Wall., 468. The court said: "It is very clear that Congress, in conceding to the States the right to tax, adopted a measure which, it was supposed, would operate to restrain them from legislating adversely to the interests of the national banks. The measure itself had reference to prospective legislation by the States, and its object was accomplished when the States conformed, as far as practicable, their revenue systems to it. Exact conformity was required, if attainable; but the law-making power did not intend such an absurd thing as that the power of the State to tax should depend on its doing an act which it had obliged itself not to do. It was well known at the time, and Congress must be supposed to have legislated on this subject with reference to it, that States, by contract with individuals or corporations, could grant away the right of taxation, and that this power had been frequently exercised. It was equally within the knowledge of Congress that the policy on this subject varied in
221 different States. While some of them retained in their own hands the power of taxation over all species of property except such as were devoted to religious or charitable purposes, others had parted with it to interests of a purely business character, like banks and railroads. Can it be supposed that Congress, with this condition of things in the country, meant to confer a privilege by one section of law which by another it made practically unavailable? If the construction contended for by the plaintiff in error be allowed, then a State so unfortunate as to have a single bank whose shareholders are exempt by contract from taxation in the manner provided by Congress can derive no benefit from the power given to tax the shares of national banks; and this further consequence would follow, that the shareholders of national banks located in one State would escape all taxation, while those whose property was invested in banks in a different locality would have to contribute their full share of the public burdens. This court will not impute to Congress a purpose that would lead to such manifest injustice, in the absence of an express declaration to that effect. Without pursuing the subject further, it is enough to say, in our opinion, Congress meant no more by the second limitation in the proviso to the forty-first section of the national banking act than to require of each State, as a condition to the exercise of the power to tax the shares in national banks, that it should, as far as it had the

capacity, tax in like manner the shares of banks of issue of its own creation."

The court should endeavor to ascertain the legislative in-
222 tent in the act of 1886 with reference to the taxation of banks, as all depends in this controversy upon what was that intent. To aid in reaching a conclusion as to what the intent was, it is well to recall some official facts within the knowledge of the members of the legislature. The 1st of July, 1885, was the date of the last report of the capital stocks of the banks in the State before the enactment of the revenue law of 1886. From that it is learned that the capital stock of 59 national banks amounted to $9,708,900. The capital stock of 65 State banks, doing business under charters granted subsequent to 1856, amounted to $6,224,891. The capital stock of the 4 State banks—Farmers' Bank of Kentucky, Bank of Kentucky, Northern bank, and the Bank of Louisville—incorporated prior to 1856, was $5,144,500. It will be seen from this statement that the capital stock of the national banks and of the State banks chartered since 1856 amounted in round numbers to $16,000,000, while the capital stock of banks whose charters antedate 1856 amounted to about $5,000,000, being less than one-third of that of the other banks named. It must be presumed that the legislature knew that the banks claiming irrevocable contracts to pay only fifty cents on each share of their capital stock equal to $100 paid less than one-third of the revenue coming from the banks under the then existing law. It can hardly be said that the Farmers' Bank of Kentucky was in a condition to claim an irrevocable contract because the act extending its charter, which became a law on March 10, 1876, expressly reserved the right to amend or repeal its charter and amend-
ments thereto. It reads as follows: "That the charter of the
223 Farmers' Bank of Kentucky, as amended, be extended for a period of twenty-five years from the termination of its charter as therein fixed: Provided, that said charter and amendments shall be subject to amendments or repeal by the General Assembly, either by general or special act: And provided further, that whilst the privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

To simply quote the act extending the charter is a sufficient denial of and answer to the claim of an irrevocable contract. This left but 3 banks in the State which could claim an irrevocable contract, and 125 without any claim whatever to immunity against increased taxation. The revenue act repealed several acts by particularly naming them, and excluded certain other acts from the repealing clause, and declared all other acts, general and special, and parts of acts inconsistent or not in conformity therewith were thereby repealed. Chapter 92, General Statutes, contained the revenue law. The only part of the act relating to the taxation of banks and other institutions of loan or discount is article 2, chapter 92, General Statutes. Section 1 of the article relates to the amount of tax which the banks shall pay, and designating the method of levying the tax. Section 2 imposes certain duties on the cashier of the bank

with reference to making a report to the auditor of public accounts Section 3 exempts banks having certain money invested in bonds or funds of the United States from taxation named in the section. By the terms of section 7, if the banks failed or refused to make the consent and agreement as provided in section 4, then they are to be assessed, and the same tax—State, county, and municipal—
224 shall be imposed, levied, and collected, etc., as is imposed on the assessed taxable property in the hands of individuals. Without section 4 the remaining sections of the article would have been a complete system for levying and collecting taxes on the banks chartered after 1856. The article treats of nothing except the taxation of banks. Under section 4 the banks were asked to waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation. The national banks were subject to the payment of taxes for State, county, and municipal purposes, and it was not necessary to obtain their consent that they might be taxed for that purpose. It was needless to ask this class of banks to enter into the agreement. The legislature may have entertained some doubt, not as to the right to tax banks for State, county, and municipal purposes, but as to the method prescribed, and desired to remove all doubt by obtaining the consent of such banks to that method. It was greatly to the interest of the national banks and the State banks chartered subsequently to 1856 to enter into the agreement, because they were thus released from the payment of county and municipal taxes. In agreeing to pay the amount provided in the article for State purposes they were released from local burdens, which, in some instances, are two or three times as great as that which they agreed to pay the State. It was greatly to their interest to accept the proposition of the State. As a matter of fact, these banks were relinquishing no rights. They were apparently yielding a right which the State in its sovereignty already possessed. The right had never been relinquished, but had been expressly reserved. So
225 vigilant had been the State to retain the control of corporations and retain its power to tax them that its purpose to do so was declared in the form of a legislative enactment, which was understood to be written in every act of incorporation. It may be a more difficult task to show why the three old banks entered into the agreement. Their right to the immunity from increased taxation was questioned, as shown by the revenue act, as their charters were declared repealed so far as they were inconsistent therewith. It was the evident purpose of the legislature to induce these banks to recede from their claim to an irrevocable contract. It was desired that all banks should be placed upon the same footing, in the matter of taxation, with the other banks of the State. The legislature had been renewing their charters, and if they were again renewed an appeal must be made to the same power. These banks may have realized that the act of 1856 should have, by a proper interpretation, been made applicable to the acts renewing their charters. However, it is needless to speculate further as to the reason which induced them to enter into the contract with the

State by which they released any irrevocable contract which they had under their charter against increased taxation. These banks had the right to give their consent to the increased taxation.

The courts have always recognized the right of a corporation to consent to legislation, or accept its provisions and be bound thereby, though it may have the effect of depriving such corporation of a vested right. This brings us to the question as to what were the terms and conditions of the contract into which all these
226 banks entered. The banks must be presumed to know the law and the effect of the contract to which they agreed. Those who represent banks are among the brightest and most sagacious business men of the country. The law is brief, simple, and without ambiguity. In short, the State agreed to accept, and the banks agreed to pay, 75 cents annually on each share of their stock equal to $100, and in consideration thereof be exempt from all other taxation whatsoever, so long as this tax shall be paid during the corporate existence of such bank. If these were all its terms, then it might be contended with some reason that it was irrepealable during their corporate existence. Being mindful of the policy which had been pursued for 30 years, it said, in effect, to the banks: "It is desired that the statute shall be accepted in the formal way prescribed, but it must be understood that the right to alter or change it is reserved to the State." That its purpose might be fully understood, the legislature placed in the article section 6, which in terms makes the statute of 1856 a part of the contract. It is expressly provided that the article shall be subject to the provisions of section 8, chapter 68, General Statutes.

The legislature was determined that the provisions of the act of 1856 should not depend on rules of construction, to be read into the contract by implication, but in terms said that it should be part thereof. It is admitted that when the word "act" appears in article 2 it has reference to the article (2). Article 2 was an independent measure, offered as a substitute to article 2 of the original bill. The substitute was adopted and became a part of the revenue bill. It now appears as part of the bill in the exact language as
227 offered. This section 6 has no reference to any part of the revenue bill except the article of which it is a part. It has been suggested that it had reference to new banks that might be organized. This could not be so, because article 2 is dealing with banks in existence, and asks them to give their consent, etc., thereto, and says, if at all, they must do so before the meeting of the next General Assembly. When it was admitted that the word "act" as used is synonymous with "article," then it must be admitted that the provisions of section 6 of article 2 are applicable alone to the article (2) of which it is a part. If there could be any doubt from the language used as to the meaning of the legislature, then that must be removed by an examination of the house and senate journals. An amendment (page 1241, House Journal 1886) was offered to article 2 of the original revenue bill, and section 7 of that amendment reads as follows: "This act shall not be subjected to the provisions of section 8, chapter 68, of the General Statutes."

The amendment (page 1243, House Journal 1886) was defeated. While the revenue bill was pending in the senate, it was proposed to amend section 6 of article 2 by inserting after the word "shall," in the first line, the words "not for ten years" (page 1315, Senate Journal 1886). This amendment was defeated. Had it been adopted, then the section would have read: "This act shall not for ten years be subject to the provisions of section 8, chapter 68, of the General Statutes."

The proceedings of the house and senate show the legislature fully understood the purpose for which this section was made part of article 2. It was the purpose of the legislature not to be restricted for any period of time in its right to repeal the
228 article and withdraw from the contract. In view of the plain provision of the statute, about the meaning of which there should be no doubt, and the intent of the legislature being fully explained by its record, it seems to us there should be no hesitation in concluding the act of 1856 should be read as part of the statute, hence an irrevocable contract did not exist. The fact that a written contract was asked and secured does not alter the application of the act of 1856. The act of 1856 should be read as part of the act of 1886, even if it had not been referred to as part of it.

In Water Co. *v.* Clark, 143 U. S., 10, this rule of construction was recognized. The court said: "But in respect to all the acts passed after 1856 amending the charter of or relating to the water company, including that of 1882, each must be read as if all the provisions of the act of 1856 were incorporated in it, because in no one of them is plainly expressed an intent to waive the right of amendment or repeal at the will of the legislature." Greenwood *v.* Freight Co., 105 U. S., 20, is to the same effect. New Jersey *v.* Yard, 95 U. S., 104, is cited by counsel for appellees and also by counsel for appellants. The facts of that case were as follows: The Morris and Essex Railroad Company was created a corporation by an act of the legislature of New Jersey passed January 29, 1835. The act provided that as soon as the net proceeds of the railroad amounted to 7 per cent. on its cost, it should pay a State tax of one-half of 1 per cent. on the costs of the road, and no other tax should be levied upon it. The twentieth section reserved to the legislature the right to amend or repeal the act whenever it should think proper. A supplemental
229 act was passed on March 2, 1836, in which the right to repeal or amend was reserved. On the 14th of February, 1846, the legislature of New Jersey passed an act in effect the same as the Kentucky act of 1856. Another supplemental act to the charter of the railroad was approved March 23, 1865, authorizing a branch road to be built, and by which the company was vested with all the powers and franchises given by the original and supplemental act, etc. The third section of the last named act reads as follows:

"Be it enacted that the tax of one-half of 1 per cent. provided by this said original act of incorporation, to be paid by the said company to the State whenever the net earnings of the said company amount to 7 per cent. upon the cost of the road, shall be paid

at the expiration of one year from the time when the road of the said company shall be open and in use to Phillipsburg, and annually thereafter, which tax shall be in lieu and satisfaction of all other taxation or imposition whatever, by or under the authority of this State or any law thereof: Provided, that this section shall not go into effect or be binding upon the said company until the said company, by an instrument duly executed under its corporate seal and filed in the office of the secretary of state, shall have signified its assent thereto, and which assent shall be signified within sixty days after the passage of the act, or this act is void." The instrument required by the section was duly executed by the company.

In the act of 1865 there was no reservation of the right to repeal or amend it. Acts of the legislature imposed a more burdensome tax on the railroad company than that provided for in sec-
230 tion 3, *supra*.

The sole question in New Jersey *v.* Yard was whether the act of 1865 and its acceptance by the railroad company constituted a contract which could not be impaired by any subsequent legislature of the State. The court held that it was an irrevocable contract, because the legislature had not reserved the right to amend or change it. It is plain from the opinion that had the legislature reserved the right to alter or change the contract or act by which it was made, the court would have held the act of the legislature doing so did not impair the obligation of the contract. Justice Miller, in delivering the opinion, said: "But, as we have already said, since the legislature which passed the act of 1865 had the power to make a contract which should not be subject to repeal or modification by one of the parties to it without the consent of the other, the main question here is, Did they intend to make such a contract? In the case now under consideration it is conceded on all hands that the act of 1865 was a contract for a tax of one-half of 1 per cent. per annum on the cost of the Morris & Essex railroad, and no more; but counsel for defendant says the contract was repealable; that the legislature of its own volition could impose other and more burdensome taxes at its discretion; that it was a contract so long as the legislature of New Jersey was satisfied with it, and no longer. It is conceded also that the construction of it cannot be sustained unless we are bound to import into it either the reservation clause of the act of 1836 or what is called the 'interpretation act of 1846.'

231 We have already shown how little reason there is for doing this on general principles of construction. We think it still clearer that it cannot be done because it is inconsistent with the legislative intent in passing the act of 1865. * * * The implication is of a right to revoke it, and comes from the other quarter, and is one which we do not think exists by fair construction and which we do not feel at liberty to import into the contract to defeat its manifest purpose." From the language of this opinion and the long line of decisions of the same court, it is manifest that the decision was made to turn on the question of the reservation of the right to amend or repeal, etc.

In New Jersey *v.* Yard the court held the act was invalid because the right to repeal or modify had not been reserved. In this case we are asked to hold the organic and statutory laws invalid because the right to repeal or modify was reserved in express terms. By the very terms of the act of 1856 a rule of interpretation is given that "all charters and grants of or to corporations or amendments thereof and all other statutes" shall be subject to amendment or repeal at the will of the legislature unless a contrary intent be therein "plainly expressed." It is proposed now by those representing the banks to disregard the statutory rule of construction. It is now in effect insisted that, in order to reserve the right claimed, it must be "plainly expressed" in the act that it is reserved. This being done, it is still disregarded. The legislature, doubtless anticipating such contention and versatility, "plainly expressed" in the article that whatever was done thereunder or in pursuance
232 thereof could only continue during its will. If section 6 was not for this purpose we would like to have had some one suggest some reason as to why it was placed in the article. The doctrine is that when it is asserted that a State has bargained away her right of taxation in a given case the contract must be clear and cannot be made out by dubious implication (New Jersey *v.* Yard, *supra*). Chief Justice Taney, delivering the opinion of the court in Trust Co. *v.* Debolt, 16 How., 425, gave a rule of construction as follows: "The rule of construction is cases of this kind has been well settled by this court. The grant- of privileges and exemptions to a corporation are strictly construed against the corporation and in favor of the public. Nothing passes but what is granted in clear and explicit terms. And neither the right of taxation nor any other power of sovereignty which the community have an interest in preserving undiminished will be held by the court to be surrendered unless the intention to surrender is manifested by words too plain to be mistaken. This is the rule laid down in the case of Bank *v.* Billings, 4 Pet., 514, and reaffirmed in the case of The Charles River Bridge Co., 11 Pet., 420."

The Supreme Court has enunciated substantially the same rule in numerous cases. The taxing power of the State is never presumed to be relinquished unless the intention to relinquish is expressed in clear and unambiguous terms (Bradley *v.* McAtee, 7 Bush, 667). It is a familiar rule of construction of statutes that effect must be given to every provision except in cases of absolute
233 and irreconcilable incongruity (Dazey *v.* Killam, 1 Duv., 407). If one statute refers to another for the power given by the former, the statute referred to is to be considered incorporated in the one making the reference (Nunes *v.* Wellisch, 12 Bush, 365).

Mr. Cooley, in his work on taxation (page 204), says: "As taxation is the rule and exemption the exception, the intention to make an exception ought to be expressed in clear and unambiguous terms; and it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain."

For the interpretation of statutes this court, in Nicholas *v.* Wells,

— Sneed, 259, said that "the most natural and genuine way of construing a statute is to construe one part by another part of the same statute; that the words and meaning of one part of a statute do frequently lead to the sense of another, and, if it can be prevented, no clause or sentence or word shall be superfluous, void, or insignificant." "As there is a clear expression of the legislative intent in the statute, no rules are really necessary to aid in its interpretation."

It can hardly be said it was unwise on the part of 125 of the 128 banks in the State, as by the very terms of the act under which the contract was entered into they were required to pay State, county, and municipal taxes, with the power in the legislature to increase it at will. It certainly was a very advantageous contract for them to enter into when these banks paid more than two-thirds of the taxes paid by all the banks, with the power in the legislature
234 to increase the amount if they should so desire. What reason can be suggested as to why the legislature would desire to reverse the policy which had been steadfastly adhered to for so long, and enter into an irrevocable contract with such banks? Why should it want to surrender a power which it had been so zealous to preserve? The contract was made subject to the right of the legislature to withdraw from it whenever it regarded the public interest demanded it should do so. Whenever the banks accepted the provisions of the act of 1886 they surrendered any rights to immunity from increased taxation which their charters gave them. The acceptance of the act of 1886 was a consent to the repeal of so much of their charters as was inconsistent therewith. Hence they stood in such relation to the State, as to future taxation, as the legislature saw proper to impose. If the provisions of their charters relating to taxation were repealed, as it must be admitted they were by the act of 1886, then such provisions were no longer in force. It is unreasonable to say that the provisions of the charters fixing the rate of taxation on the banks at 50 cents on each share of the capital stock of the banks equal to $100 can be in force if the act of 1886, fixing such tax at 75 cents instead of 50 on shares, is in force. In doing this, it must be admitted, the charter privilege has been repealed. If repealed, then, by the act of 1886, surely the only way in which the provisions of their charters could be restored would be by the legislature so providing in some act. There is no pretense this has been done. The fact that the law of 1886 has been repealed does not restore the former provisions of their charters.

Section 464, Kentucky Statutes, provides: "When a law
235 which may have repealed another shall be repealed the previous law shall not be revived unless the law repealing it be passed during the same session of the General Assembly."

It is a most groundless contention to say that, if the present law is sustained, the old banks will be restored to the former privileges under their charters. It has been suggested that the provisions of their charters with reference to taxation were vested rights, and although they consented to the legislation of 1886 and became subject to the provisions of the act of 1856, still, as the charter

privilege as to taxation was a vested right, therefore it was saved to them by the provision which preserves "other rights previously vested." The proviso of the act of 1856 is "that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested." If a corporation by its charter or a general law is exempted from the payment of taxes it is released of a duty or burden. It enjoys an immunity of exemption from a general law which imposes the burden of the Government on others. It may be said it enjoys a privilege. "Franchise is a branch of the King's prerogative subsisting in the hands of a subject" (2 Shars. Bl., 37).

The legislature has reserved the right to amend or repeal the privileges and franchises, thus reserving the power to destroy or qualify the privileges and franchises which have been granted. The "other rights" which have become vested while operating under the charter cannot be impaired by an amendment or repeal. These "other rights" do not embrace "privileges and franchises." The "privileges and franchises" are the rights bestowed by the State to be withdrawn or destroyed at the pleasure of the legis-
236 lature. In the exercise of its pleasure the legislature may fix a higher rate of taxation, or it may declare to those enjoying the franchise that they shall no longer have it. Privileges and franchises are not "vested rights" either in the letter or the spirit of the act of 1856. "Other rights" referred to in that act are such as the beneficiaries under the charter or general laws may have in property, contracts, choses in action, real and personal property, in fact every interest which they could acquire in operating under the charter or law, and also such rights or interests as other persons may have previously acquired by contract, mortgage, judgment, or otherwise in property belonging to the corporation. The purpose of the act of 1856 was to reserve in the legislature the power to destroy the privileges and franchises granted in the charters. If it does not have this effect it would be entirely inoperative, and the effort to retain control of corporations would be abortive. The claim that the privileges granted by article 2 can be repealed, but without the right to terminate their enjoyment, is not founded on reason. The only privileges which the banks enjoyed was to pay the 75 cents on each share of stock in lieu of all other taxes. To say that the law granting the privilege can be repealed because the right to do so was reserved as is admitted, and still leave the banks in its enjoyment (as is the effect of the opinion of the court in the bank tax cases), is to disobey a plain statute, to ignore the authority of the opinions of the Supreme Court, and is a failure to follow sound reasoning in the settlement of a question of vast importance to the State and the people. The former
237 opinion on this question gave the banks the substance and the State the shadow. Had section 6 of article 2 provided that the act of 1856 should not be considered part of it, we do not doubt the representatives of the banks would have easily seen the meaning of the provision. As it is plainly written that the act of

1856 is to be considered a part of the article, they have the very greatest difficulty in seeing the purpose of the provision.

It was said in Griffin *v.* Insurance Co., 3 Bush., 594: "The proviso was intended to secure the right of beneficiaries and others vested under the charter before its amendment or repeal, and does not affect the mere power to repeal the franchise." To the same effect is Cumberland & O. R. Co. *v.* Barren County Court, 10 Bush., 604.

Section 174 of the constitution recognized a just principle when it declared that all property, whether owned by persons or corporations, should be taxed in proportion to its value unless exempted thereby, and that all corporate property should pay the same rate of taxation paid by individual property. The legislature, in obedience to that provision of the constitution, enacted the law for levying and collecting taxes from the banks of the State, the validity of which is in question in these cases.

For the reasons already given we conclude that the *the* obligations of no contracts were impaired by the action of the constitutional convention or the succeeding legislature. Some of the best lawyers in the State were members of the convention which framed our constitution, who gave an earnest consideration to the questions involved in these cases, and the conclusions which they reached were crystal-ized into section 174 of the constitution. We
238 believe that their conclusions are correct.

The former opinion of the court denies the power is in the legislature to say what taxes the banks of the State shall pay for State purposes during the existence of their several charters. It denies the right of the legislature to compel them to bear any of the burdens of county and municipal government. We cannot believe the legislature did or intended by article 2 of the act of 1886 to reverse its policy so earnestly pursued for a generation, and surrender to 60-odd banks of the State its right, previously reserved, to control them in the matter of taxation, and to give up its power to increase or diminish the taxes imposed on 125 banks, this including the national banks. Exigencies may arise requiring the levying and collecting of vast sums to meet the public demand; yet, however great the emergency may be or imperative the demand for money to meet such wants, the legislature is powerless to compel the banks to contribute more than they are now paying at any time during their corporate existence. The counties and municipalities are annually compelled to raise large sums of money by taxation. The counties of the State are compelled to incur large expense to support the county governments, to pay for bridges and public highways, and support their unfortunate citizens. The municipalities must incur great expense in making all necessary improvements for the comfort, safety, and health of their citizens, to supply water and lights, and to give police protection to their citizens and to the banks. The organic and statutory laws of the State, in our opinion, require that the banks should contribute their proper share of such expense to the local governments.

239 In Franklin County Court *v.* Deposit Bank of Frankfort, 87 Ky., 370, the court adjudged that there was a broad distinction between the extension of a charter and the grant of a new one. This is true in a certain sense. To extend a charter requires a statute to be enacted which grants certain rights to the corporation. Under the act of 1856 all statutes and also grants to corporations are subject to amendment or repeal. All acts granting extensions to the charter of corporations since the 14th of February, 1856, are as much subject to amendment or *appeal* as are acts of incorporation passed since that date. In so far as the case of Franklin County Court *v.* Deposit Bank of Frankfort, 87 Ky., 370, is in conflict with this opinion it is overruled (Shields *v.* Ohio, 95 U. S., 323; Railroad Co. *v.* Maine, 96 U. S., 503; Commonwealth *v.* Masonic Temple Co., 87 Ky., 349).

There are many national and State banks organized since the passage of the Hewitt bill. They certainly cannot claim with any degree of reason that they have any, much less an irrevocable, contract with the State. If there could have been any doubt on the question it is removed by the case of Bank of Commerce *v.* Tennessee, 163 U. S., 416. If the banks which accepted the Hewitt law are to be exonerated from the payment of county and municipal tax, then during the existence of their respective charters the burden placed upon the banks is not equal and just. In the same city or town we will have part of the banks paying county and municipal tax while others have immunity from such burdens. It will greatly increase the value of the stock of the banks enjoying special privileges, while it will necessarily render less valuable stock in
240 the banks which have the burden of a share of county and municipal taxes. It will be a check on the organization of new banks. It will give the favored banks a monopoly of the business in their respective communities. The effect would be an unjust and unwarranted discrimination.

It was seriously argued in the former opinion of this court that the enforcement of the constitution and laws will diminish the revenues of the State government. With this we have nothing to do. It is our business to obey the constitution and respect the statutes enacted in accordance therewith. Were this a question of policy involved, it is not considered a great task to vindicate its wisdom. While more of the citizens' tax will go to support the State government, yet he is trebly compensated by the banks contributing their fair share of county and municipal taxation, and thus reducing the amount which each citizen will be required to pay to sustain the local governments.

The cases of Deposit Bank of Owensboro, Farmers' & Traders' Bank, Owensboro Savings Bank, and Citizens' Savings Bank *v.* City of Owensboro, &c.; Deposit Bank of Owensboro *v.* Daviess County, Simpson County Bank *v.* City of Franklin are affirmed, and the cases of City of Carlisle *v.* Deposit Bank of Carlisle; Nicholas County *v.* Deposit Bank of Carlisle, and City of Carlisle *v.* Farmers' Bank are reversed, with directions that further proceedings conform to this opinion.

Judges Hazelrigg, Du Relle, and Burnam dissenting.

241 The following is the dissenting opinion, delivered at the same time:

Dissenting Opinion by Judge Durelle.

Assuming that I should differ from the former opinion of the court if the construction sought upon these appeals were an original question now for the first time presented for decision, and that the meaning of the constitutional and statutory provisions under consideration is so plain that I should do so without regard to argument drawn from real or supposed inconvenience which might result from my construction, I am, nevertheless, constrained to dissent from the present opinion. The case is not, in my judgment, one in which a former erroneous decision upon a question of taxation is sought to be overruled by the court as to taxes assessed for subsequent years, nor do I intend here to express an opinion upon that class of cases.

The original opinion, now overruled by the opinion of the court, was not a mere question of liability to tax under statute or constitution. It was a question of contract proprietary right and was so decided. Having been so decided after elaborate discussion and full consideration, it having been established by that decision that a contract right existed, and property of enormous value having doubtless changed hands upon the strength of the property right so adjudged to exist, this court should be slow to overturn a decision which has stood for more than a year and a half the law of the Commonwealth.

242 It has been said, and in general it is true, that "the certainty of a rule is of more importance than the reason on which it is founded." The rule having been settled, though, in my judgment, not correctly, having been acted upon for a considerable time, I think it should be adhered to until the question is again presented to the court by legislative action or constitutional amendment. Instability in the decisions of a court of last resort with respect to property rights not only leads to an increase of speculative litigation, instituted for the purpose of testing the sentiment of the court as constituted at that time, but directly invites persons and corporations interested in the determination of such questions to undue and improper interference in the selection of judges. In my judgment, the evils to result from the continuance of the incorrect rule are less than those which will result inevitably from the alteration of the rule by a divided court.

These views, which I have stated without elaboration or argument, are sustained by the reasoning of the Supreme Court in Gelpcke *vs.* City of Dubuque, 1 Wallace, 203, 206; Green *vs.* Neal, 6 Peters, 299, 300; Trust Co. *vs.* Debolt, 16 How., 432.

For these reasons, to the extent that the opinion disturbs rights adjudged by the former opinion to exist, I do not concur in the opinion of the court.

243 On March 25, 1897, the following extended opinion was delivered:

Extension of Opinion by Judge Paynter in Bank Tax Cases.

The banks are not required to pay tax on the money deposited with them by their customers or on amounts which represent it. Owing to the particular character of the business which they conduct, they are quasi- trustees of their depositors, and under the law the depositors are required to pay the tax on the money so deposited. The bank should be required to pay tax on the shares of capital stock, on their surplus funds, undivided profits, franchises, and their real estate.

Afterwards, at a court of appeals held, as aforesaid, on the 12th day of April, 1897, the following order was entered herein:

"Came the appellant, by counsel, and filed a petition and moved the court to grant a rehearing and for an extension of the opinion and reversal in this case; which motions are submitted."

The following is a copy of the petition filed by the foregoing order:

244 *Petition for Extension of Opinion and Reversal.*

CITIZENS' SAVINGS BANK
vs.
CITY OF OWENSBORO.

* * * * * * *

Appellants in the above-styled actions, which were heard together, ask the court to extend the opinion in each of these cases and to reverse them. While we are unable to agree with the majority of this court in the opinion delivered in these cases, and believe it to be in conflict with the decided weight of authority, and, as we think, in hopeless conflict with the decisions of the Supreme Court in Bank of Commerce *vs.* Tennessee and Shelby County, 161 U. S., 134, and 163 U. S., 416, yet, as this court has considered and reconsidered the main question involved, we believe a due deference to the decrees of this court requires that further argument on the main question involved should cease in this forum.

But these cases should be reversed on other grounds not considered in the court's opinion.

In view of the fact that the court in its opinion in these
245 cases did not consider certain vital questions involved in each of these appeals, and which entitle appellants, as we conceive, to a reversal, we again venture to urge them upon the attention of the court, believing they were overlooked, and that when the attention of the court is especially called to them it will extend the opinion and reverse the actions for the errors we again specifically point out.

Cases Decided in Lower Court on Demurrer.

A general demurrer to each of the petitions in these cases was sustained by the lower court; hence the allegations of the petitions and amended petitions, in so far as they state a cause of action, must be regarded and treated as true on this appeal.

Five of these cases are against the city of Owensboro and one against Daviess county. That we may get sharply and as briefly as possible before this court the grounds relied on in this petition for an extension of the opinion and a reversal, we proceed to call the attention of the court specially to some of the allegations in the pleadings.

Substantially the following allegations will be found in each of the petitions and amended petitions:

"On the first day of October, 1894, the defendant Simmons, as city tax collector, wrongfully levied a pretended tax list or tax claim for defendant against plaintiff on certain personal property belonging to it in the city of Owensboro, etc. The taxes claimed and levied for were for the year 1893 and amounted to $—
246 (each petition stating the amount of taxes claimed against it for that year), with 10 per cent. penalty and 10 per cent. interest."

Then it is averred that the tax collector, on the same day and in the same manner, levied for taxes for 1894 (the petitions stating the amounts) and for 10 per cent. penalty and 10 per cent. interest."

It needs no argument to show that the levies, in so far as they were for 10 per cent. penalty and 10 per cent. interest, were illegal (if the taxes were levied under the present law), and that the injunctions, to this extent in any event, should have been sustained by the lower court. The present law does not authorize the collection of a penalty of 10 per cent., nor 10 per cent. interest against delinquent tax-payers. (See sections 3392 and 3400, Ky. Statutes.)

The city had no authority to collect a franchise tax or tax against appellants on their capital stock or surplus funds for the year 1893.

The city of Owensboro is proceeding in this case to collect taxes on the capital stock and surplus funds of appellants for the years 1893–'4 under and by virtue of the general revenue laws of the State approved November 11, 1892. That the act of November, 1892, does not confer upon the city of Owensboro the right to levy or collect such taxes we proceed briefly to demonstrate.

Owensboro's Charter of April 27, 1882.

Prior to the passage of the act chartering cities of the third
247 class, to which class Owensboro was assigned, it existed under a charter granted by the legislature April 27, 1882, of which charter this court will take judicial notice. Our position is until the legislature passed a law for the government of cities of the third class, which it did not do until the 14th day of June, 1893, that the

city of Owensboro continued to exist, and that all its powers were derived from its charter of April 27, 1882.

If this position is correct it follows that the attempt of the city in these cases to levy a tax upon the capital stock and surplus funds of these banking institutions or a franchise tax for the year 1893 was void for the reason that the charter of the city of Owensboro, approved April 27, 1882, conferred no such authority. Reference to that charter will show that the only authority conferred upon the city of Owensboro to levy taxes was upon real estate, personal property, choses in action, money, deposits, rights, or demands owned or held by persons domiciled or residing in Owensboro on the 10th day of January, in the year in which the assessment was made, allowing a deduction for the choses in action, debts, etc., which the person or corporation might actually owe as principal debtor on the 10th of January, and the further sum of $100 which is exempt from taxation.

The powers conferred on the city of Owensboro by this charter to assess and collect taxes will be found in sections 42, 43, 44, 45, 46 47, 48, 49, 50, and 51.

It will not be pretended by any one that the city of Owensboro had any power or authority to levy or collect the taxes which *is* sought to be collected in these actions under its charter of 1882.

248 We call the attention of the court especially to section 45 of that charter, which provides that the assessment of all property made under it was to be made as of the 10th day of January in each year. The importance of this fact will appear further on in this discussion.

Was Owensboro's Charter of 1882 *in Force on the* 10*th Day of January,* 1893?

If the above question is answered in the affirmative, it follows that the attempt of the city to collect the taxes sought to be collected in these actions for 1893 was illegal. If the charter of 1882 was in force on the 10th day of January, 1893, then the legal right of appellants to be taxed according to the provisions of the then existing law accrued, and if any valid assessment was made against them it must necessarily have been made under and by virtue of the law then in force.

The right of the city to tax, the nature and extent of its power to tax the property subject to taxation, and the liability of the tax-payers residing in the city of Owensboro were fixed by the law then in force. These rights being mutual, they became vested on the day the law required the assessment to be made, and while it was competent for the legislature to alter the rate of taxation, to enlarge or restrict the items of property subject to taxation by subsequent legislation, the rights of the city and tax-payers for that fiscal year became vested after the 10th day of January. No change imposing a larger or greater burden of taxation could be legally made for

that fiscal year. Phillips *vs.* Covington & Cincinnati Bridge
249 Co., 2nd Met., 219; Bierley, &c., *vs.* Quick's Run & Ohio Rover T. P. R. Co., 17th Ky. Law Reporter, 36.

We quote a single sentence from the last-cited case to sustain the accuracy of the position we now contend for. In that case this court says:

"The act having gone into effect after the assessment for the year 1890 had been or should have been completed, the collection of taxes for that year was properly enjoined."

Our position on this point could not be made plainer by further argument, and if the court concurs with us in our contention that the charter of the city of Owensboro, approved in 1882, was in force on the 10th day of January, 1893, it follows that the city's effort to collect the taxes sought to be enjoined in these cases was unauthorized and it had no warrant in law, and that the injunctions sought against the city as to the taxes of 1893 should have been sustained.

Did the city of Owensboro exist under its charter of 1882 on the 10th day of January, 1893? It certainly did, unless the provisions of the constitution providing for the classification of cities and towns of this Commonwealth was self-operative, for it must be borne in mind that the city of Owensboro and the other third-class cities of the State were not chartered under the present constitution until the 14th day of June, 1893, as we have already shown. That the provision of the constitution with respect to the corporate existence of municipalities organized at the date of the adoption of the constitution was not self-operative is settled in the case of Byrne, solicitor, *vs.* City of Covington, 15th Ky. Law Reporter, page 34, in
250 which this court held that the cities and towns in existence at the date of the adoption of the constitution continued their existence under their then existing charters until a new law was passed providing for their organization pursuant to the constitution. The court further says in the case cited:

"The charters and cities must have been left with some vitality, and it could not have been the purpose of the framers of the constitution to divest them of all power conferred by existing charters, nor to suspend them until the legislature had passed laws for their regulation in accordance with the provisions of the constitution."

The court further says in this same case:

"And if looking to the present constitution it is difficult to see how these provisions in regard to taxation can be self-operative until classified and regulated as provided by sections 156 and 157."

Again, in the case of Holzhauser *vs.* City of Newport, 16th Ky. Law Reporter, it is held that section 157 of the present constitution limiting the tax rate of towns and cities is not self-operative, but addressed to the legislature, indicating the limitation of the power it shall give the several classes of town and cities when it comes to provide for the general law for their government. It is held in this case that until this is done the existing charters of towns and cities of this Commonwealth organized at the date of the adoption of the

constitution continued in force, including their tax rate and method of raising revenue.

It seems to follow from the foregoing that the city of Owens-
251 boro was at the date of the levy and attempted collection of the taxes for 1893 sought to be enjoined in these actions, operating under its charter of 1882, and that its sole power with respect to levying and collecting taxes was derived from that instrument. This is plain (1) because at the date of the levy and assessment for that year the legislature had passed no law chartering and organizing the cities and towns of the State, and so the city of Owensboro at that time had no existence as a third-class city; (2) because the general revenue law of the State passed November 11, 1892, conferred no authority on the city of Owensboro to levy and collect this tax; that act related alone to the State revenues and to the power and authority of the State to collect for State and county purposes, and did not and could not have referred to the rate of taxation or the power of municipalities to tax when no such municipalities had been created; (3) because, by the act of June 14, 1893, it is expressly provided that the authorities of cities to tax under and by virtue of the powers conferred by that act, which was the act organizing cities and towns of the Commonwealth, is made to depend upon ordinances passed pursuant to that act, and there is no pretense in these cases that the city exercised or pretended to exercise this power with respect to the taxes of 1893; but if it had done so its act would have been void, as we have already seen, because long prior to the passage of the act of June 14, 1893 (if the charter of 1882 remained in force), the time for assessing and levying taxes for the fiscal year had passed; (4) any act passed
by the General Assembly subsequent to the 10th day of
252 January, 1893, did not and could not relate to taxes that had already accrued for the fiscal year. This is true by the express provisions of section 14, chapter 107, Acts of 1891, '2, '3, wherein it is provided: "No part of this revision is retrospective unless expressly so declared." C. & O. R. R. Co. *vs.* Washington County Court, 10th Bush, 564. In Long and Wife *vs.* City of Louisville, 17th Ky. Law Reporter, 253, this court says:

"Neither the new constitution nor the charter for cities of the first class passed July 1, 1893, was intended to release taxes assessed under the charter of the city of Louisville theretofore in force or to destroy any of the existing remedies, and therefore, as to all outstanding, unpaid taxes assessed and levied by the city of Louisville prior to July 1, 1893, the remedies theretofore provided for their collection and recovery may still be invoked. Neither constitutions nor statutes should be given a retrospective operation unless the language used clearly shows such an intention."

This case is conclusive and settles the accuracy of the foregoing contention. It is an authority directly in point to the effect that the city of Owensboro continued to exist under its charter of 1882 until the act chartering third-class cities, approved June 14, 1893, was passed. The effort in the case cited was to collect taxes from certain tax-payers in the city of Louisville for a number of years,

and among the years sought to be collected for was the year 1892 This court held that the act of July 1, 1893, was prospective in its operation, and it quoted as follows from section 194 of that act:

"That all taxes already levied or imposed under existing
253 law, and not yet paid, remain payable unless the contrary be thereafter provided."

It seems clear from this that the cities and towns of the Commonwealth existing at the date of the adoption of the constitution were to be continued under their then existing charters until the legislature rechartered them pursuant to the provisions of the present State constitution. If this is a correct view, the city of Owensboro, on the 17th day of April, 1893, which was the day on which it made its levy an- assessment for that year, existed under and by virtue of its charter of 1882, and it possessed no other or g- ater powers than those conferred by that charter, and it is admitted that by that charter the power to collect the taxes sought to be collected in these actions did not exist.

Again, in Jones *vs.* Shelly, 14 Ky. Law Reporter, 278, this court says:

"Taxes assessed by the city of Louisville prior to July 1, 1893, the date at which the charters for cities of the first class went into effect, may be collected in the mode provided by the tax laws of the city of Louisville in force at the time they were assessed."

Another express recognition on the part of this court that the old charters of cities continued in force until the new charters provided for in the constitution were regularly passed and approved. It is another case directly in support of our position that the city of Owensboro continued to exist under its charter of 1882 until the act of June 14, 1893, became a law.

On the same subject and to the same effect we cite the case
254 of Covington Gaslight Company *vs.* The City of Covington, 13 Ky. Law Reporter, 577. Further in support of the claim that the city of Owensboro had no right or authority in any event to levy and collect the taxes sought to be collected in these actions, we call the court's attention to section 29 of the act approved June 14, 1893, wherein it is provided that before the cities and towns therein can proceed to exercise their taxing power under the constitution and the general law of the State enacted pursuant thereto, that they shall first pass ordinances for that purpose.

It is alleged in the petition in each of these cases that no such ordinance was ever passed by the city of Owensboro, but the allegation was unnecessary, for how could the city of Owensboro, on or prior to April 14, 1893, pass an ordinance pursuant to a law which had not then been enacted?

It will be interesting also in this connection to observe the fact that neither of the constitutional provisions relating to the classification and powers of cities and towns of the State nor the act of the legislature passed pursuant thereto makes it mandatory upon the municipalities to levy and collect taxes upon the capital stock, franchises, and surplus funds of banking institutions. The power is simply conferred upon municipalities. Whether they will exer-

cise it or not is a matter purely within their discretion. They may, if they desire, provide for the assessment and levy of taxes upon bank capital and bank surplus and franchise under the act chartering cities of third class, but whether they will do so or not depends upon the fact as to whether or not they shall pass ordi-
255 nances declaring their purpose to exercise the power conferred.

A Self-evident Proposition.

But why should we labor the court with argument on this point, in view of section 166 of the constitution, which provides:

"All acts of incorporation of cities and towns heretofore granted and all amendments thereto, except as provided in section 167, shall continue in force under this constitution, and all city and police courts established in any city or town shall remain, with their present powers and jurisdictions, until such time as the General Assembly shall provide by general laws for the government of towns and cities and the officers and courts thereof."

In view of this section it is impossible for us to conceive how the city of Owensboro, which at the date of the adoption of the constitution existed under a charter theretofore granted to it, could cast aside that charter or acquire other or greater rights with respect to taxation or in any other respect than that charter conferred until it was rechartered pursuant to the section of the constitution above quoted.

II.

A Violent Presumption.

Assuming that the court for any reason should dissent from the accuracy of the foregoing and should hold that the city of Owensboro at the date of levying and fixing its tax rate for 1893 was operating under the revenue law of November, 1892, and not under its charter of 1882, still these cases ought to be reversed and the levy and attempted collection of the taxes for 1893 should be
256 enjoined for the following reasons:

It is alleged in each of the amended petitions filed December 22, 1894, that the city of Owensboro on the 17th day of April, 1893 (the day when the levy for city taxes for that year was made), had only a population of 9,837.

It is also alleged in the amended petitions that the tax levy made by the city of Owensboro for the year 1893 was one dollar on every one hundred dollars' worth of property subject to taxation in said city.

The demurrer admits the allegation of the petitions that Owensboro was at that date a city of less than 10,000 population.

By section 157 of the present State constitution it is provided, among other things, that "the tax rate for cities, towns, etc., shall not at any time exceed the following rates upon the values of the taxable property therein, viz: For all towns or cities having less than 10,000, seventy-five cents on the one hundred dollars."

The petitions in these cases aver that the rate of tax fixed by the city council of Owensboro for the year 1893 was one dollar upon the value of each one hundred dollars' worth of taxable property in said city. It thus appears that the levy was twenty-five cents in excess of the maximum rate authorized in the section of the constitution above quoted. It follows, therefore, if the court shall hold that the charter of 1882 had been repealed and the city of Owensboro no longer existed under that instrument, still the taxes levied or attempted to be levied by the city council for that year
257 could not be collected, because the levy was in excess of the limit allowed by the section of the constitution above quoted; hence the levy was void, and any attempt to collect taxes under it might have been lawfully restrained by any tax-payer of the city.

If the court shall ever reach this phase of the case, it is confidently believed by counsel for appellants that it will be held that the city had no right to collect taxes in excess of the maximum rate provided for in the sections above quoted. Whether the court, therefore, shall take the one view or the other in the matters herein presented, the levy and attempted collection of the taxes sought to be enforced by the city of Owensboro for the year 1893 was void, and may therefore be properly enjoined.

State Constitution, Section 181.

As further illustrating, if further illustration is necessary, the utter absurdity of the city of Owensboro's right to impose taxes under or by virtue of the general revenue law of the State passed November 11, 1892, we quote from the section of the constitution above referred to:

"The General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may by general laws confer on the proper authorities thereof respectively the power to assess and collect such taxes."

In view of this section, how can it be argued that the city of Owensboro acquired any right or authority to collect or assess taxes under the general revenue law of 1892? Quoting further from section 181, we have the following:

"And (the legislature) may, by general laws, delegate the
258 power to counties, towns, cities and other municipal corporations to impose license fees on stock used for breeding purposes, on franchises, trades, occupations and professions."

It is plain, therefore, that the purpose and intent of the framers of the constitution, in so far as cities were concerned, was to leave the subject of municipal taxation to be exercised alone by municipal authorities. The legislature had no power to pass an act imposing a tax upon any class of property or upon any individual for municipal purposes, the exercise of that power being conferred alone upon municipal authorities.

All the legislature could do and what it was commanded to do was to confer the power by appropriate legislation upon the legislative department of the several municipalities of the State and leave

to their discretion to exercise or not exercise the power which had been conferred.

Whatever, therefore, the taxes sought to be collected in these cases may be for, whether a tax on the capital and surplus of the bank or a tax on their franchise, no right was conferred on the city by the general revenue law of November, 1892, to exercise these powers. The reasons for this have already been fully stated.

Deposit Bank vs. Daviess County.

As stated in a previous part of this petition, one of these cases is against Daviess county.

An examination of that petition will disclose the fact that one of the grounds relied on in that case is based upon section 180 of the constitution, which is as follows:

259 "The General Assembly may authorize the counties, cities, or towns to levy a poll tax not to exceed one dollar and fifty cents per head. Every act enacted by the General Assembly and every ordinance and resolution passed by any county, city, town, or municipal board or local legislative body levying a tax shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose."

The late Hon. W. N. Sweeney, after a careful examination of this section of the constitution and many authorities touching its construction, unhesitatingly pronounced the opinion that a resolution levying a county tax which failed to specify distinctly the purpose or purposes for which said taxes were levied was void, and that it conferred no authority upon the county to collect such taxes. We believe the opinion reached by that distinguished lawyer was sound, and that this court, when it comes to pass upon the question, which we now ask it to do, in the last above-styled case will vindicate the accuracy of his opinion.

It is alleged in the petition of Deposit Bank *vs.* Daviess County that the order or resolution of the county court levying the taxes for 1893–'4 failed to specify distinctly and failed to specify at all the purposes for which said tax was levied.

This allegation of the petition the demurrer admits to be true. If the section above quoted is to be given any effect, it seems to us that the failure to specify the purpose for which the tax was levied is necessarily fatal, and that any effort to collect taxes under such levy might be properly enjoined.

260 The framers of the constitution evidently intended something by the language employed in the section above quoted, and if that section is to be given any meaning at all its provisions must be construed as mandatory, and a failure to comply with them should be held to vitiate the resolution or order, and that such an order would not confer any power whatever to collect the taxes so attempted to be levied. We trust this honorable court will carefully construe this section and in its official capacity declare its legal impoer.

What Taxes are Sought to be Enjoined?

Is the tax sought to be enjoined in these actions a tax upon the capital and surplus funds of the banks, as intimated in the opinion of the court, or is it a tax on the franchise of the banks?

If a tax on the former, as already pointed out, the city is wrongfully and without any authority at all proceeding to collect this tax. This will more clearly appear by reference to section 181 of the constitution, which we will notice further, presently.

If it is a franchise tax the city is in no better attitude. That it is a franchise tax plainly appears from the following exhibit filed with each of the petitions, which shows on its face that the tax sought to be enjoined herein is no more nor less than a franchise tax:

OFFICE AUDITOR PUBLIC ACCOUNTS,
FRANKFORT, KY., *Aug.* 15, 1893.

County clerk Daviess county.

261 DEAR SIR: The State board of valuation and assessment have made the following assessment of franchise in the above county for 1893:

Please file the statement in your office and furnish copies to the various collectors of taxes.

First national bank, Owensboro	183	192	50
Owensboro national bank	155	079	27
Bank of Commerce, Owensboro	106	559	08
Bank of Whitesville	14	722	11
Owensboro savings bank	71	185	45
Deposit Bank of Owensboro	292	849	95
Owensboro Banking Co	55	618	00
Citizens' savings bank, Owensboro	125	607	67
Farmers' & Traders' bank, Owensboro	115	853	81

Yours truly, L. C. NORMAN, *Auditor.*

A copy.
Attest: J. T. GRIFFITH,
Clerk Daviess County Court,
By JAS. H. TAYLOR, *D. C.*

The petitions allege that the claim for taxes in each of these cases is based alone upon the foregoing certificate of the State board of valuation and assessment, wherein, as appears from the certificate, said board fixed the value of the franchise of these appellants for the year 1893 for the purposes of State taxation only.

While, as already argued, the city of Owensboro is given
262 the power under section 3290 of the Kentucky Statutes, by ordinance, to impose a tax on franchises, if it saw proper to do so, these records show that it has never exercised that power, but instead is attempting, through its collector, to collect this franchise tax under section 4092 of the statutes, which has application alone to the State's revenue.

But we have already shown that the city, if it had passed an ordinance, had no authority to collect a franchise tax or a tax on the capital and surplus of the banks for the year 1893.

The Tax for 1894.

Appellants, in the several cases against the city of Owensboro, insist that the city has no right or authority to collect the taxes sought to be enjoined for the year 1894 for the reasons, as alleged in the petitions, the city council of Owensboro never passed any ordinance whatever, as provided in the charter of third-class cities, authorizing the assessment or levy of the taxes sought to be enjoined. It is unnecessary to reargue the proposition that the city had no authority to collect taxes except as it has passed appropriate ordinances in conformity with the power conferred on it by law for that purpose.

Each of the petitions aver that the city did not have the power to collect the tax sought to be enjoined for the year 1894, because (1) that it had passed no ordinance authorizing it to do so, and (2d) that it had never made any assessment of taxes for that year.

If either of these propositions is true, it follows that the effort on the part of the city to collect these taxes from appellants was
263 illegal.

It will be observed by reference to the charters of cities of the third class, section 3390, that the only power or authority conferred upon the city tax collector to levy or collect taxes is by virtue of the tax book placed in his hands. Whatever taxes appear on that book the city tax collector may lawfully proceed to collect, but except as taxes appear assessed on his book he has no power or authority to collect them; he can neither add to nor subtract from the things written in that book.

The petitions in these cases aver that the taxes which the tax collector was proceeding to collect from the appellants and which they seek in these actions to enjoin did not appear on the collector's books.

No Assessment of the Taxes Sought to be Enjoined Herein.

In the amended petitions filed in these cases Dec. 22, 1894, will be found the following allegations: "The said city did have an assessor for the year 1893, and he did assess the property liable to taxation as aforesaid, and returned his assessment thereof to the city council of said city on or before the first Monday in April, which was before said 17th day of April, 1893; but the said assessor did not assess the property of plaintiff except its banking-house, and the name of plaintiff did not appear on any assessment returned by said assessor, nor was any omission in this respect supplied by a board of supervisors or other corporate action of said city."

This is a direct averment that there was no assessment
264 against appellants, and that the effort to collect taxes in these actions is not authorized by any assessment whatever. This

is admitted by the demurrer, and, being admitted, authorized appellants to a perpetuation of the injunction sought herein.

In Slaughter, &c., *vs.* City of Louisville, 89 Ky., 116, this court says: "The valuation or assessment of property in this State not only belongs to the ministerial department of the Government, but is an indispensable act in order to levy ad valorem taxes upon it. In the nature of the thing there must be an assessment."

The court quotes with approval from Mr. Cooley the following: "Of the necessity of an assessment no question can be made. Taxes by valuation cannot be apportioned without it. Moreover, it is the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follow it. Without assessment they have no support and are nullities. It is therefore not only indispensible, but in making it the provisions of the statute under which it is to be made must be observed with particularity."

Again in the late case of Turner *vs.* Town of Pewee Valley, reported in the 18th Ky. L. R., 755, this court says: "A town ordinance instructing the assessor in making the assessments to adopt the list made by the county assessor for State and county taxation and assessments made pursuant thereto are void, no provision being made even for a report to the board of trustees for its approval or for giving the tax-payer an opportunity to be heard and correct his lists."

In this case it is distinctly held, as in the 89th Ky. case
265 already cited, that any effort to collect taxes except on an assessment previously made by it is void.

The petitions in these cases aver that no assessment whatever was made or attempted to be made; and defendant by its demurrer admitting this, we submit on the authorities above quoted that the attempt to collect the taxes was absolutely void.

By section 3406 of the charter of the cities of the third class, it is made the duty of the assessor to make and return a full and complete list of all the taxable property and tithes in the city once in each year.

By section 3384 of the charter, it is made the duty of a board of supervisors to assess any property that may have been omitted by the assessor.

By section 3387 of the charter, it is made the duty of the city clerk to write up the tax books when they have been passed upon by the board of supervisors, and to state in the tax book the amount of taxes due on each list, and the name of the person owing the same, and to deliver such book, properly certified by him, to the collector.

The tax book thus made out is the collector's sole warrant for levying and collecting taxes. Both with respect to the taxes of 1893 and 1894, the petitions aver that no ordinance was passed by the common council of the city of Owensboro levying these taxes, and no assessment made, and that the board of supervisors placed no such taxes on the tax books, and therefore the collector was without authority to levy for or collect any part of same.

This taxing power is a high governmental function and
266 should be strictly construed. In City of Louisville *vs.* Louisville Gas Co., 15 Ky. L. R., 177, this court says:

"In an action to enforce the collection of taxes, each step that is required to be taken to constitute a valid assessment and levy must be specifically pleaded in order to show authority for the collection of same."

Appellants rely upon the law and facts stated herein not only as authorizing a reversal of the judgments in so far as they relate to the taxes for the year 1893, but the taxes for the year 1894 as well.

Further comment appears to us to be unnecessary, and, without seeking here to disturb, in the slightest degree, the integrity of the opinion delivered herein, we insist, for the reasons stated, the opinion as to these appellants should be extended, and the judgments of the lower court as to them reversed.

The questions discussed in this petition were raised in our briefs, amended and supplemental briefs. We never for one moment lost sight of the fact that all the questions involved on these appeals were of the very first importance, and so regarding them we held it to be our duty to present every phase of these cases to the court.

But your honors have overlooked, in the mass of questions presented, every question presented in this petition. That the questions now again urged upon the court are of as much importance to those who pay the taxes and bear the burdens of the Government as the main question already decided, cannot successfully be denied.

267 In view of this, we urge, as it is not permitted to us to demand, that the court, if it declines to agree to the views presented herein, will honor us with a written response exposing the errors into which we have fallen in this petition.

Very respectfully,

WEIR & WEIR,
R. A. MILLER,
WILFRED CARICO, AND
SWEENEY, ELLIS & SWEENEY,
Attorneys for App'l'ts.

Afterwards, at a court of appeals held, as aforesaid, on the 21st day of May, A. D. 1897, the following order was entered herein:

CITIZENS' SAVINGS BANK *v.* CITY OF OWENSBORO. } Daviess.

The appellee, by counsel, filed a response to the petition for a rehearing herein.

The response referred to in the foregoing order is as follows:

Counsel for appellants urge a new trial. We shall notice their contentions in the order in which they are presented.

They insist that the opinion in this case is hopelessly in conflict

with the decisions of the Supreme Court in the case of Bank of Commerce *v.* Tennessee and Shelby County, 161 U. S., 134; same case, 163 U. S., 416.

The most superficial reading of the case first referred to show that there was no contention or pretense of a reservation of authority by the State of Tennessee in the contract made with the bank by the granting of the charter. The court held in that case the capital stock might be increased from time to time by persons making deposits and demanding certificates when the de-
268 posits amounted to as much as $50. This continued up till the new constitution of Tennessee, adopted in 1870, and was continued up till 1894.

The contention was on the part of the State that either the shareholders were taxable or else the bank itself was taxable under the new constitution, and it left to the court to determine which should be subjected; also, it was contended by the State that if the old shareholders could not be taxed, then the holders of the new shares, who took their shares after the new constitution, should be taxed nevertheless.

As to this last question, the court said that it could not consider it because the court below had decided in favor of the Federal question. But on a petition for a rehearing the court determined—163 U. S., 416—that it had fallen into error; that it had a right to determine this question, and it did determine that the new stockholders were subject to the tax imposed by the new constitution of the State, which taxed bank property as other property.

Not only so, but the first case above referred to, in 161 U. S., was immediately followed by the case of Shelby County *v.* Union and Planters' Bank, in which it was determined that notwithstanding the provision in the charter exempting the shares of the stock in the hands of the stockholders, yet the State and its subdivisions had full authority to impose a tax upon the capital stock of the corporation or its surplus and accumulated profits.

This decision discusses many of the cases, and how counsel for appellants conceived that there was anything in either one
269 of them in conflict with the court's decisions in this case is not easily perceived.

It is next urged that the court did not consider all of the questions urged by appellants, and made no mention of some of them in its opinion.

It is a well-established rule of this court that where one of the parties to an appeal raises certain questions, and the court fails to allude to them in its opinion, then the questions are considered as being decided adversely to the party making them, as fully and to the same extent as though in the opinion each question is specifically referred to.

It is next insisted that the court below sustained a general demurrer to each petition, and that therefore all the allegations of the petition must be taken as true. It will be observed by reading the judgment in any one of the cases that it is expressly stated that the case was heard by the lower court on the whole record. The issues

had been completed, and the judgment recites that the depositions were read, and also that the defendant read in evidence the house and senate journals, in so far as they related to the passage of the revenue act commonly known as the "Hewitt bill," providing for the taxation of banks.

It is insisted that the levies were illegal, in so far as 10 per cent. penalty and 10 per cent. interest was included in the levy.

It is a well-settled principle of equity jurisprudence that one who will have equity done to him must first do equity to others;
270 and it has been decided in numerous cases that before an injunction can be had against the collection of a tax, the party seeking such injunction must first pay, or tender and offer to pay, in good faith, the amount of tax which he concedes he owes, and that no injunction will be granted because a small amount of the tax may be unauthorized and unlawful. "The amount of penalty to be enforced for the non-payment of a tax is a matter within legislative discretion." Western Union Telegraph Co. *v.* Indiana, 165 U. S., 304.

In the case here referred to, a penalty of fifty per cent. was imposed.

The next contention is that the city had no right to collect a tax off appellants under the levy for 1893. Prior to the adoption of the act governing cities of the third class, the city of Owensboro was a municipal corporation by authority of "An act creating a new charter for the city of Owensboro," which was approved March 18, 1882. We think we have fully discussed this matter in our original brief, and it seems to us there is nothing whatever in the point. We shall only add, however, that by section 43 of the act of 1882, above referred to, the city of Owensboro was authorized to impose taxes upon all property taxable by the laws of the State of Kentucky; by section 4077 of the Kentucky Statutes, which is the act of November, 1892, and which was passed and became a law before January 10, 1893, on which date the city of Owensboro is supposed to have made its levy for that year, or, in other words, it was required to make it as of that date. It is provided that corporations, including every incorporated bank, trust company, etc., shall,
271 in addition to the other taxes imposed on it by law (which means taxes on visible property), annually pay a tax on its franchise to the State and a local tax thereon to the county, incorporated city, town, and taxing district where its franchise may be exercised; so that we have the plain proposition that by the act of November, 1892, the legislature of the State of Kentucky, in providing for the general revenue of the State and in bringing into the realm of taxation a new kind of property, subjected this property to the payment of taxes to cities, counties, etc., and that the levy made under the charter then in force was upon all property taxable January 10, 1893, and this property, being taxable, not by virtue of the old charter specially, but by virtue of the revenue act, became immediately subject to taxation without waiting for the adoption of a new charter pursuant to the provisions of the new constitution.

The charter for cities of this class became a law June 14, 1893, but it in nowise affected the question of the taxation of corporations on their franchise, because these were made subject to taxation for the benefit of the cities by the general law of the State and by virtue of the then existing charters, which continued in force. The levy was imposed, not by the State, but by each municipality.

In support of the contention of appellants counsel refer the court to the case of Phillips *v.* Covington & Cincinnati Bridge Co., 2 Metcalf, 219. A careful examination of this case will fail to show that it in any manner refers to the question raised, or that it is even analogous to the question raised in any particular.

272 Appellants also refer to the case of Bierley, etc., *v.* Quick's Run & High River T. P. R. Co., 17 Ky. Law Rep., 36.

In that case the act imposing the tax did not become a law until Feb., 1890, which was after the assessment for 1890 had been or should have been completed, and as there was no provision in the act requiring the tax to be levied for 1890, hence the tax could not be imposed. It does not take much thought to distinguish between the cases. In the case at bar the act under which the tax is imposed, the general revenue law, became a law in November, 1892, and the levy was not imposed and could not be imposed until on or after the 10 of January, 1893; so in our cases the law was in effect when the tax was imposed.

The questions involved in the case of Burn, solicitor, *v.* City of Covington, 15 Ky. Law Rep., p. 34, simply decides that the city's charter continued in force and effect pursuant to the provision of the constitution in all respects, except as modified by another provision of the constitution, which related only to the election of officers, until a new charter should be granted to them. This is the substance of the decision and all that there is in it.

There is nothing in the contention that the city did not pass an ordinance imposing a tax for 1893 on appellants' franchise. It passed an ordinance imposing a tax upon all property within the city limits, of whatever kind, subject to taxation by law for said year. The act of November, 1892, having made the franchise of appellants subject to taxation for city purposes for said year, the levy attached to it, and nothing could have been added to

273 the city's authority by its stating in the ordinance that it exercised an authority which it already had. The city could not confer upon itself by ordinance any authority, but merely exercise the authority already vested. The levy is not retrospective, and does not fall within the rule of C. & O. R. R. Co. *v.* Washington County Court, 10 Bush., 564.

Counsel for appellants conceive some novel ideas of the legal construction of the constitution and statutes of the State. They contend that by section 29 of the act of June 14, 1893, it is provided that before cities and towns can proceed to exercise their taxing power under the constitution and the general laws of the State they must first pass ordinances for that purpose—that is to say, that before they can pass an ordinance levying a tax they must first pass an ordinance saying what property they will tax. The section of

the statute referred to is section 3290 and subsection one, which is as follows: "The common council of each of said cities, shall within the limitation of the statute and this act, have power by ordinance: subsection (1) to levy and collect taxes upon all property, franchises and privileges taxable for said purpose"—that is to say, that by an ordinance they impose the levy, and that is all that is meant.

Section 171 of the constitution provides that "taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

274 So that, notwithstanding the acts of the legislature and the organic law of the land, which is absolutely mandatory as construed by this court in the case of Levy *v.* City of Louisville, 97 Ky., 394, we are told that the court cannot tax any property unless it first passes an ordinance declaring its intention to do so, and then proceed by another ordinance to levy the tax. It is even contended that the power of taxation in *any* respects is a mere privilege to be exercised or not exercised by the cities in their discretion. This is absurd and completely at variance with the decision above quoted.

Appellants claim that it is stated in each petition that no such ordinances were ever passed by the city of Owensboro. Whether it is so stated or not, the city would not go through the foolish process of trying to lift itself on a higher plane of sovereignty by pulling at its own boot-straps. The petitions do acer that the city by ordinance imposed the taxes complained of.

We have now reached that part of the petition for a rehearing which is entitled "A violent presumption." This "violent presumption" seems to consist in making the point that the population of the city of Owensboro at the time the levy for 1893 was made was less than 10,000; that the tax levied for that year was $1.00 on every $100 of property subject to taxation in that city. This presumption does become violent when we come to consider that most of all the petition for a rehearing up to the "violent presumption" consists in an effort to demonstrate to the court that the old charter of the city, which did not limit the rate of taxation, remained in force until the new charter was granted.

Turning back in this petition to pages 7 and 8, we find
275 counsel quoting from the case of Holtzhouser *v.* City of Newport, and on the last-named page we find, in italics, a part of the following sentence: "It is held in this case that until this is done (that is, a new charter granted) the existing charters of towns and cities of this Commonwealth organized at the date of the adoption of the constitution continued in force, including their tax rate and method of raising revenue."

Now, if counsel have demonstrated to the court that the charters not only continued in force, about which there can be no doubt, but that the tax rate continued in force, then looking at the charter of the city of 1882 and finding no limit to the rate of taxation, we are relieved of the difficulty of urging upon the court an

argument to rival that contained under the heading of a "violent presumption."

It is distinctly determined in the Holtzhouser case that until the adoption of the new charters the rate of taxation was not limited by the provisions of the constitution on that subject; and so, having the authority to levy the rate, that rate applied, not only to all property which originally could not be taxed under the charter, but to the new property made taxable for municipal purposes by the act of November, 1892.

Counsel for appellant proceed next to take consolation from section 181 of the constitution, the point being that that section prohibited the legislature from providing for taxes for towns and cities, and is then followed by the unique statement, on page 16, as follows: "All the late legislature could do, and what it was commanded to do, was to confer the power by appropriate
276 legislation upon the legislative department of the several municipalities of the State, and leave it to their discretion to exercise or not exercise the power which had been conferred."

In order to fully appreciate this point, and at the hazard of repeating, we will notice some of the constitutional and statutory provisions relating to this subject.

Section 171 of the constitution provides: "The General Assembly shall provide by law an annual tax, which with other resources shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

Section 172 provides: "All property not exempt from taxation by this constitution shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale."

Section 174 provides: "All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the General Assembly from providing for taxation based on income, license or franchise."

Now, we come to section 181 relied on by counsel for appellant, which is as follows: "The General Assembly shall not
277 impose taxes for the purpose of any county, city, town or other municipal corporation, but may by general laws confer on the proper authorities thereof respectively the power to assess and collect such taxes. The General Assembly may by general laws only provide for the payment of license fees on franchises, stock used for breeding purposes, the various trades, occupations and professions, or a special or excise tax; and may by general laws delegate the power to counties, towns, cities, and other municipal corporations, to impose and collect license fees on stock used for

breeding purposes, on franchises, trades, occupations and professions."

The point, we suppose, counsel intended to make is really in regard to the method of assessing their property, and they did not distinguish between the assessment of property and the levying of taxes upon property. So that section 181 simply prohibits the General Assembly from imposing taxes—that is, levying taxes—for the purpose of any county, city, town, or other municipal corporation; but this is subject to two conditions. In the same section it is said the General Assembly may by general laws only provide for the payment of license fees on franchises, stock used for breeding purposes, etc., and also one further limitation contained in section 174, which is "Nothing in this constitution shall be construed to prevent the General Assembly from providing for taxation based on income, license, or franchise."

Now, according to the decision of this court in the case of Levy *v.* City of Louisville, 97 Ky., 394, the legislature, under these
278 constitutional provisions, was directed in regard to the assessment of tangible property. At page 405 this court says: "The power of the legislature to tax the franchise is expressly conferred, and for that reason the mode of determining its value is pointed out by that body; and after creating a board of valuation to value every and all corporations, associations, or companies having or exercising any exclusive privilege or franchise, the power of this board is confined to the invisible estate of the corporation and its real and tangible property, such as can be seen and valued by the assessor, is required to be omitted, or, rather, deducted from the value of the franchise as found by the board, because this species of property is required to be assessed in the county or place where located or its franchise exercised."

"The legislature was careful when adopting a mode of valuing a franchise to omit from its valuation the taxable property that must, under the provisions of the constitution, be assessed where located by the State, county, or municipal authorities at its fair cash value, and whether or not this mode is nearer uniformity and equality than the mode contended for is not for this court to determine, nor can these provisions, so plain and unmistakable in their purpose, be made the subject of judicial construction. It must be conceded that if the mode of valuing a franchise had been fixed by the constitution as is found in the statute, no power would exist in the legislature to adopt any other mode."

Now, it is contended that the act of 1892 related only to State taxation, but, continuing on page 406 in the case above cited,
279 this court says: "If, as contended by counsel for the city, this mode of assessment applies alone to the State it would be difficult to determine under what provision of the constitution municipal governments derive the power to classify property for taxation or even to impose taxes for any purpose. Nor can it be assumed that in prohibiting the legislature from imposing taxes on or for municipalities the convention intended to leave the entire mode of assessment to the discretion of the general council. It

gave to such bodies the exercise of a power expressly denied to the representatives of the people."

And as showing most conclusively that this mode of taxation falls under the exceptions referred to in sections 174, 181, of the constitution above quoted, and as explaining just what was meant by these sections, this court in the same case says: "The object of such a provision as placed the city government beyond legislative control as to imposing taxation was to prohibit the latter body from determining the amount to be imposed and the objects to which it should be applied."

Continuing further, at page 407, same case, the court discusses the effect of the reservation in section 174 and holds most distinctly that this power of assessing remained with the legislature whenever it related to franchises, licenses, etc.; but the court has gone further. In the case of Commonwealth against Louisville Water Co., 18 Ky. Law Rep., p. 620, this court determines that the assessment of franchises can be made in no other way than by the board which made the assessment in these cases. The court says: "We are satisfied the assessment of the value of the franchise of the Louisville
280 Water Co. was not nor could have been legally made by the assessor of Jefferson county, but only by the board of valuation and assessment provided for in section 477 of the Kentucky Statutes."

It is the h-ight of folly for us to longer argue a proposition that is not only self-evident from the constitution and the statute, but which has been fully construed by this court.

It is contended that by the revenue act of 1892 the State was making assessment of franchises for State taxes only, but how this can be contended for in view of the act we are unable to perceive.

Section 4077 provides that such corporation shall only pay a tax on their franchise to the State and a local tax thereon to the county, incorporated city, town, or taxing district where its franchise may be exercised; and section 484 provided for the certification of this assessment to the county clerk and by him to the respective collecting officers of the subdivisions of the government entitled to collect the tax.

If the legislature knew what it was doing, it meant something by these provisions; but if the contention of appellants is right, these provisions mean nothing.

Coming now to that part of the petition for a rehearing which discusses the tax for 1894, we find that we have already answered the contentions. The first contention is that the city had passed no ordinance authorizing it to levy such a tax; but, as before stated, it is admitted that an ordinance was passed levying the tax. The thing which they complain about is that the city did not first pass an ordinance saying, We propose to tax certain property. It
281 had no discretion in the matter, and such an ordinance would have been child's play.

The second contention is that the city had never made any assessment of the franchise tax for the year 1894. It had no right to do so, as already shown, but the assessment was made for it.

Counsel in their petition for a rehearing, prepared by Messrs. Weir & Weir, undertake to make the point that the general revenue law of November 11, 1892, provided that on or before March 1, 1893, they should make certain reports for the assessment of taxes for 1892. This is an error. That was not the basis upon which the tax of 1892 should be levied, but the base of the tax for 1893.

This much we have to say on this subject: Since preparing the foregoing we have heard, what we suppose to be an unfounded rumor, that this court will take back and reverse its decisions in these cases. This could hardly be possible. It is true that in deciding these cases this court took back the decision rendered by the same court, but composed of different judges. This it did by way of correcting an erroneous opinion which is not borne out by the authorities anywhere. There is not, as we confidently believe, to be found in the reports of either the State or Federal courts a single decision that holds that the State cannot recede from a contract in regard to taxation where it has reserved the power as provided by the act of 1856 and as is done in the Hewitt bill.

The first decision rendered in the Louisville bank cases did not strike the bar of the State as sound law. The dissenting opinion was approved by almost every lawyer in the State who did not
282 represent a bank or trust company. The decision of the court in these cases met the approval of all disinterested lawyers as well as the great laboring masses who pay taxes.

It is not believed that any substantial reason has been given for modifying or changing the decision heretofore rendered.

If the court shall, nevertheless, think otherwise and feel constrained to withdraw or reverse its opinion it will at this particular juncture be little short of a calamity, threatening to involve individual and corporation in common disaster. This question of equal taxation is one of that class which will never be settled until settled rightly.

If the appellants in these cases are not satisfied, they have a plain remedy by writ of error to the Supreme Court of the United States, the decision of which court will be a final determination of this question, but if this court reverses its decision the cities and towns in behalf of the tax-payers cannot take this question before the Supreme Court for its consideration. We are exceedingly anxious for appellants to take this question to the Supreme Court in order to have this question finally put to rest in the State of Kentucky.

We most respectfully ask the court to overrule the petition for a rehearing, and to adhere to its able, just, and learned opinion rendered in these actions.

J. D. ATCHISON,
Att'y for Appellees.

Afterwards, at a court of appeals held, as aforesaid, on June
283 19, A. D. 1897, the following order was entered herein:

CITIZENS' SAVINGS BANK
v.
CITY OF OWENSBORO. } Daviess.

The court being sufficiently advised, the petition for a rehearing in this case is overruled.

On the 5th day of January, 1899, the appellant and plaintiff in error filed in the cler-'s office said Kentucky court of appeals its writ of error (a copy of which is filed in said clerk's office) in words and figures following, to wit:

284 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the Kentucky court of appeals, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Citizens' Savings Bank of Owensboro, appellant, and City of Owensboro and A. M. C. Simmons, tax collector, appellees, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or
285 commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Citizens' Savings Bank of Owensboro, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 5th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal Circuit Court, Ky. Dis., U. S. of America.]

WALTER G. CHAPMAN,
Clerk of the Circuit Court of the United States.

Allowed by—
JAS. H. HAZELRIGG,
Chief Justice Ky. Ct. of Appeals.

[Endorsed:] 1899, Jan'y 5, filed.

286 On the same day the plaintiff in error filed in said clerk's office its bond in words and figures following, to wit:

Know all men by these presents that we, Citizens' Savings Bank of Owensboro, as principal, and Josiah Hale and William Calhoon, as sureties, are held and firmly bound unto City of Owensboro in the full and just sum of five thousand ($5,000.00) dollars, to be paid to the said City of Owensboro and certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a court of appeals of Kentucky, in a suit depending in said court between Citizens' Savings Bank of Owensboro, appellant, against City of Owensboro and A. M. C. Simmons, tax collector, a judgment was rendered against the said Citizens' Savings Bank of Owensboro, appellant, and the said appellant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Owensboro and citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Citizens' Savings Bank shall prosecute said writ to effect and answer all damages and costs if it fail to make its plea good,
287 then the above obligation to be void; else to remain in full force and virtue.

JOSIAH HALE, [SEAL.]
By J. A. DEAN, *Attorney-in-fact.*
WILLIAM CALHOON, [SEAL.]
By J. A. DEAN, *Attorney-in-fact.*

Sealed and delivered in the presence of—

——— ———.

Approved by—
JAMES H. HAZELRIGG,
Chief Justice of the Appellate Court of Kentucky.

We, the undersigned, do hereby nominate, constitute, and appoint J. A. Dean, of Owensboro, Kentucky, our attorney-in-fact, and authorize and empower him to sign our names, as sureties for the Citizens' Savings Bank of Owensboro, to any bond or bonds that may be necessary or required in the cause of the said Citizens' Savings Bank of Owensboro, plaintiff in error, against The City of Owensboro and A. M. C. Simmons, tax collector, defendants in error, in taking the same from the court of appeals of Kentucky into the Supreme Court of the United States on writ of error; also to sign our names as sureties to any bond or bonds that may be necessary or required to secure the payment of costs and fees in said cause in the said Supreme Court; also to deliver to the proper officer each and all of said bonds.

Witness our hands, at Owensboro, Kentucky, this the 3rd day of January, A. D. 1899.

288 JOSIAH HALE.
WILLIAM CALHOON.

COMMONWEALTH OF KENTUCKY, }
County of Daviess, } *sct:*

I, G. T. Herr, a notary public in and for the county and State aforesaid, do hereby certify that this day personally appeared before me the above subscribed Josiah Hale and William Calhoun, who are to me personally known, and duly acknowledge the foregoing power of attorney to be their act and deed.

Given under my hand and seal of office, at Owensboro, Kentucky, this the 3rd day of January, 1899.

G. T. HERR,
Notary Public, Daviess County, Kentucky.

My commission expires March, 1900.

COMMONWEALTH OF KENTUCKY, }
County of Daviess, } *sct:*

This affiant, Josiah Hale, says he is the same who signed and acknowledged the power of attorney to J. A. Dean, hereto attached, and that he is worth, over and above his liabilities and exemptions, the sum of ten thousand dollars, and that he is a citizen and resident of the county and State aforesaid.

JOSIAH HALE.

Sworn to before me by the above-signed Josiah Hale this the 3rd day of January, 1899.

G. T. HERR,
Notary Public of Daviess County, Kentucky.

My commission expires March, 1900.

289 COMMONWEALTH OF KENTUCKY, }
County of Daviess, } *sct:*

This affiant, William Calhoon, says he is the same who signed and acknowledged the power of attorney to J. A. Dean, hereto

attached, and that he is worth, over and above his liabilities and exemptions, the sum of ten thousand dollars, and that he is a citizen and resident of the county and State aforesaid.

WILLIAM CALHOON.

Sworn to before me by the above-signed William Calhoon this the 3rd day of January, 1899.

G. T. HERR,
Notary Public of Daviess County, Kentucky.

My commission expires March, 1900.

On the same day the plaintiff in error filed in said clerk's office its assignment of errors in words and figures following, to wit:

Supreme Court of the United States.

CITIZENS' SAVINGS BANK OF OWENSBORO, Plaintiff in Error, *vs.* CITY OF OWENSBORO and A. M. C. SIMMONS, Tax Collector, Defendants in Error. } Assignment of Errors.

The plaintiff in error, Citizens' Savings Bank of Owensboro, says that in the record and proceedings in the above-styled cause there is manifest error in this, to wit:

290 I.

The court of appeals of the Commonwealth of Kentucky erred in affirming the judgement of the Daviess circuit court sustaining demurrers to the petition and amended petitions of the plaintiff in error and dismissing said petition and amended petitions and dissolving the injunction theretofore obtained by the plaintiff in error enjoining the collection of the taxes, penalties, and interest claimed by the defendants in error for the years 1893 and 1894, to wit: For the year 1893, the sum of $1,884.51, with ten per cent. penalty and ten per cent. per annum interest thereon from July 1st, 1893, and for the year 1894, the sum of $1,719.16, with ten per cent. penalty and ten per cent. per annum interest thereon from July 1st, 1894.

II.

The Daviess circuit court erred in sustaining the demurrers to the petition and amended petitions of the plaintiff in error and in dismissing said petition and amended petitions and in dissolving the injunction theretofore obtained enjoining the collection of the said taxes, penalties, and interest.

III.

The court of appeals of Kentucky and the Daviess circuit court erred in holding that the capital stock, surplus, and undivided profits of the plaintiff in error are subject to taxation by the defendant in error, The City of Owensboro.

IV.

The said courts erred in holding that the acceptance by
291 the plaintiff in error of the provisions of the act of the General Assembly of the Commonwealth of Kentucky approved May 17th, 1886, and commonly known as the "Hewitt act," and which is article 2 of chapter 92 of the General Statutes of Kentucky, did not constitute an irrevocable contract between the plaintiff in error and the Commonwealth of Kentucky.

V.

The said courts erred in holding that said contract was revocable at the pleasure of the Commonwealth of Kentucky or of the legislature thereof.

VI.

The said courts erred in holding that the repeal of the said act of May 17th, 1886, commonly known as the "Hewitt act," terminated the contract under said act made between the plaintiff in error and the Commonwealth of Kentucky and terminated plaintiff in error's immunity from county and municipal and other local taxation under the provisions of the said "Hewitt act" and under its charter, the latter being a special act of the General Assembly of the Commonwealth of Kentucky entitled "An act to incorporate the Citizens' Savings Bank of Owensboro, approved May 12th, 1884.

VII.

The said courts erred in holding that the constitution of Kentucky, adopted September 28th, 1891, sections 174 and 175, and the statutes enacted under said sections, imposing taxes upon the capital
292 stock, surplus, undivided profits, and franchises of the plaintiff in error for county and municipal purposes, did not impair the obligation of the contract made between the plaintiff in error and the Commonwealth of Kentucky by the acceptance of the provisions of the said "Hewitt act," and did not violate the tenth section of article I of the Constitution of the United States, which provides that no State shall enact any law impairing the obligation of contracts.

VIII.

The said courts erred in holding that the plaintiff in error was liable for ten per cent. penalty and ten per cent. per annum interest on the taxes assessed against it for the said years, because the same is in excess of the rate of penalty and interest imposed by the laws of Kentucky upon natural persons and individual citizens and property-holders for failure to pay taxes when due upon similar property in their hands, and the statute of the said State imposing the said ten per cent. penalty and ten per cent. per annum interest upon corporations for failure to pay taxes when due upon their property is a denial to plaintiff in error of the equal protection of the laws of the State and in violation of section 1 of article XIV of the Constitution of the United States.

IX.

The said courts erred in holding that the assessments on which the taxes sought to be enforced against the plaintiff in error are based are legal, and that the statute under which said assessments were made is valid, because in said assessments the capital stock, surplus, and undivided profits of the plaintiff in error are
293 assessed at their full value, while other money capital in the hands of individuals is required by law to be assessed and is assessed at not more than seventy per cent. of its value, and this is a denial to the plaintiff in error of the equal protection of the laws and in violation of section 1 of article XIV of the Constitution of the United States.

Wherefore the plaintiff in error humbly prays this court to reverse each and all of said judgments and orders of the said court of appeals of Kentucky and of the said Daviess circuit court, and that said courts be directed to overrule the said demurrers and reinstate and make perpetual its said injunction, and for all proper relief.

J. A. DEAN,
Attorney for Plaintiff in Error.

294 COMMONWEALTH OF KENTUCKY, *sct:*

I, Samuel J. Shackelford, clerk of the Kentucky court of appeals, in compliance with the writ of error herein and herewith returned (a copy being on file in my office), hereby certify that the preceding two hundred and ninety-three (293) pages contain a true and complete transcript of the record and proceedings had in said court of appeals in the case of Citizens' Savings Bank of Owensboro, appellant, against The City of Owensboro, &c., appellees (together with copies of assignment of errors and bond), as the same appears of record and on file in my office.

Seal Kentucky Court of Appeals.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 5th day of January, A. D. 1899.

SAMUEL J. SHACKELFORD,
Clerk of the Kentucky Court of Appeals.

Fee for this transcript, $93.25.

295 UNITED STATES OF AMERICA, *ss:*

To City of Owensboro and A. M. C. Simmons, tax collector, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Kentucky court of appeals, wherein Citizens' Savings Bank of Owensboro is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error men-

tioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Hazelrigg, chief justice of the Kentucky court of appeals, this 5th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. HAZELRIGG,
Chief Justice of the Kentucky Court of Appeals.

296 I hereby accept service of the within citation.
January 7th, 1899.

CHAPEZE WATHEN,
Attorney for Defendants in Error.

On this 7th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared, at Owensboro, Kentucky, before me, the subscriber, J. A. Dean, who is to me personally known, and makes oath that he this day delivered a true copy of the within citation to John D. Atchison, attorney for the defendants in error in the suit below, and also to W. P. Small, mayor of the city of Owensboro.

J. A. DEAN.

Sworn to and subscribed the 7th day of January, A. D. 1899.

[Seal of G. T. Herr, Notary Public, Daviess Co., Ky.]

G. T. HERR,
Notary Public, Daviess Co., Ky.

My commission expires March, 1900.

Endorsed on cover: File No. 17,254. Kentucky court of appeals. Term No., 669. Citizens' Savings Bank of Owensboro, plaintiff in error, *vs.* City of Owensboro and A. M. C. Simmons, tax collector. Filed Jan'y 10, 1899.

No. 669.

Motion to advance.

Office Supreme Court U. S.
FILED
FEB 17 1899
JAMES H. McKENNEY,
Clerk.

Filed Feb. 17, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1898.

CITIZENS SAVINGS BANK, of Owensboro, - - - } - - - *Plaintiff in Error,*

vs. No. 669.

CITY OF OWENSBORO, &c., - - *Defendants in Error.*

MOTION TO ADVANCE, ETC.

HOWARD PRINTING CO., OWENSBORO.

Supreme Court of the United States.

OCTOBER TERM, 1898.

CITIZENS SAVINGS BANK, of Owensboro, - - - - - *Plaintiff in Error,*

vs. **No. 669.**

CITY OF OWENSBORO, &c., - - *Defendants in Error.*

MOTION TO ADVANCE, ETC.

On behalf of the plaintiff in error and the defendants in error, we respectfully move the Court to advance the above styled cause for hearing and assign the same to be heard and submitted at the same time and together with the causes of Owensboro National Bank vs. City of Owensboro, &c., No. 148; Deposit Bank of Owensboro vs. City of Owensboro, &c., No. 149; Farmers and Traders Bank, vs. City of Owensboro, &c., No. 151; and the other bank tax causes from Kentucky, all heretofore ordered heard and submitted together; and that the briefs in all of said causes, for both plaintiffs in error and defendants in error, be taken and considered as briefs, for plaintiff and defendants respectively, in this cause, and that leave be given counsel for plaintiff in error to file

additional brief in twenty days, and to counsel for defendants in error, in thirty days, from the date of the submission of this cause, if they shall elect so to do.

We further agree and represent to the Court, that some of the questions in this cause are identical with some of the questions in all of the other said causes, and that all the questions in this cause are identical with those in some of the other causes.

Witness our hands this 10th day of February, 1899.

J. A. DEAN,
For Plaintiff in Error.

CHAPEZE WATHEN,
For Defendant in Error.

FILED
MAR 10 1899
JAMES H. McKENNEY,
Clerk.

No. 669.

Brief of Dean for P. G.

Filed Mar. 10, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 669.

Citizens' Savings Bank of Owensboro, - Plaintiff in Error,

vs.

City of Owensboro, and A. M. C. Simmons, Tax Collector, - Defendants in Error

BRIEF FOR PLAINTIFF IN ERROR.

J. A. DEAN,
For Plaintiff in Error.

HOWARD PRINTING CO., OWENSBORO, KY.

Supreme Court of the United States

OCTOBER TERM, 1898.

No. 669.

CITIZENS' SAVINGS BANK, OF OWENBORO, ... } . . . *Plaintiff in Error,*

vs.

CITY OF OWENSBORO AND A. M. C. SIMMONS, TAX COLLECTOR, } . . *Defendants in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

Inasmuch as it has been agreed by Counsel in this cause, and ordered by the Court, that the briefs in the other bank tax causes from Kentucky shall be taken and considered as briefs in this cause, we shall not attempt any elaborate argument or citation of authorities, and shall content ourselves with but a brief statement of facts.

The plaintiff in error was chartered for a term of thirty years, by a special act of the General Assembly of the Commonwealth of Kentucky, approved May 12, 1884. This act may be found

in volume 2 of Acts 1883-84 at page 1190, and is printed in full in an appendix to this brief. The seventh section of said act is as follows:

> SEC. 7: "That it shall be the duty of the cashier on the first day of January in each year, to pay into the State treasury, for the benefit of revenue proper, fifty cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus thereon of every kind."

Under the said charter books for the subscription of stock were opened and the requisite stock subscribed, and the bank was organized and began business on the 16th day of February, 1886. In the State of Kentucky many banks were in existence, all operating under charters enacted by special acts of the General Assembly of the State, some passed before, and some after, the Act of February 14, 1856. In some of these charters one rate of taxation was provided and in others another rate—most of them providing for a rate of fifty cents on the hundred dollars, but some providing for only twenty-five cents on the hundred dollars; and in all cases the provision being that said sum should be in full of all taxes—the banks being exempted from local, municipal and county taxation. The question of subjecting banking capital to local taxtion had long been agitated in the State, and it was a mooted question as to the power of the legislature to do this in view of the charter provisions referred to. Under these circumstances it was proposed on the part of the State, to offer to the banks a compromise securing to them immunity from local taxation during the existence of their charters in consideration of their agreeing and binding themselves, in due legal form, to pay to the State seventy-five cents each year on each one hundred dollars of their capital stock, surplus and undi-

vided profits during said time; and in order to carry into effect this compromise what is commonly and popularly known as the "Hewitt" Act was passed by the legislature of the State, and approved by the Governor on the 17th day of May, 1886. Said act constitutes Article II. of chapter 92 of the General Statutes of the Commonwealth of Kentucky and, in full, is as follows:

ARTICLE II.

Stocks in Banks and other Institutions.

SECTION 1. "That shares of stock in State and National Banks, and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations, or societies, and said banks, institutions, and corporations shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county, and municipal. For the purpose of ascertaining such surplus, undivided profits, or undivided accumulations, the Auditor may, at his option, investigate the books of such bank, institution, or corporation; and any officer having in charge the affairs of such bank, institution, or corporation who shall refuse, when duly called upon for the purpose, to allow his books to be investigated, shall be subject to indictment in the Franklin Circuit Court, or the circuit court of the county wherein said bank, institution, or corporation shall be located, and, upon conviction, shall be fined not less than five hundred dollars and not more than one thousand dollars. The Commonwealth may, in the county wherein said bank, institution, or corporation is located, institute an action in any court

having civil common law jurisdiction of the amount involved for the recovery of the fine.

SEC. 2. "The cashier of a bank, and the treasurer of any other institution or corporation, whose stock is taxed, shall, on the first day of July in each year, report to the Auditor of Public Accounts the true amount of the capital stock, the true amount of surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations is invested, and pay into the treasury the amount of tax due. If such tax be not paid, the cashier and his sureties shall be liable for the same and twenty per cent. upon the amount, and any State bank, institution, or corporation shall thereby forfeit the privilege of its charter. The officer making the report shall attach thereto the following affidavit, to which he shall make oath before some officer authorized to administer oaths: 'I,————, swear (or affirm) that I am the ————of———— , and that I have, in the foregoing report, truly and accurately reported the amount of the capital stock, the amount of the surplus, the undivided profits or undivided accumulations of said————, and how or in what said surplus, undivided profits, or undivided accumulations is invested.'

SEC. 3. If any such bank, institution, or corporation, on the first day of July in any year, has invested in the bonds or funds of the United States, which are by law exempt from taxation, more of its surplus, undivided profits, or undivided accumulations than an amount equal to ten per cent. of such capital stock, the excess of the amount so invested over the amount equal to ten per cent. of such capital stock shall be exempt from taxation for that year and deducted from the amount of such surplus, undivided profits, or undivided accumulations, upon which tax is to be assessed under this article, provided such was made in good faith and not for the purpose of avoiding taxation. The officer who makes the report required by the second section of this article shall attach to the report his affidavit, stating

that such investment was made in good faith, and not for the purpose of avoiding taxation.

SEC. 4. "That each of said banks, institutions, and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the Governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank.

SEC. 5. "The said banks may take the proceeding authorized by section 4 of this act at any time until the meeting of the next General Assembly: *Provided*, They pay the tax provided in section 1 from the passage of this act.

SEC. 6. "This act shall be subject to the provisions of section eight (8), chapter sixty-eight (68), of the General Statutes.

SEC. 7. "If any bank, State or National, shall refuse or fail to pay the tax imposed by this act, or shall fail or refuse to make the consent and agreement as prescribed in section 4, the shares of stock of such bank, institution, or corporation and its surplus, undivided accumulations, and undivided profits, shall be assessed as directed by section 2 of this act, and the same taxes, State, county, and municipal, shall be imposed, levied, and collected upon the assessed shares, surplus, undivided profits, undivided accumulations, as is imposed on the assessed taxable property in the hands of individuals: *Provided*, That nothing herein contained shall be construed as exempting from taxation for

county or municipal purposes any real estate or building owned and used by said banks or corporations for conducting their business, but the same may be taxed for county and municipal purposes as other real estate is taxed."

Section 8 of chapter 68 of the General Statutes of Kentucky, referred to in section 6 of the above act, is as follows:

SEC. 8. "All charters and grants of or to corporations, or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, That whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

Immediately after the passage and approval of said act, and before the meeting of the next General Assembly, the plaintiff in error duly accepted the provisions of said act, waiving and releasing its right to a lower rate of taxation, under its charter, and paid the taxes therein provided from the passage of said act, and has continued to do so, or offered to do so, to the present time.

On the 28th day of September, 1891, a new Constitution was adopted for the State of Kentucky containing the following provisions:

SEC. 174. "All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value unless exempted by this Constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income, license or franchise.

SEC. 175. "The power to tax property shall not be sur-

rendered or suspended by any contract or grant to which the Commonwealth shall be a party."

By an act approved November 11, 1892, which is chapter 108 of the Kentucky Statutes, the legislature of the State of Kentucky repealed the revenue law of the State known as the "Hewitt" Act and enacted a law changing the method of taxing banks and greatly increasing the rate of taxation against them by subjecting them to State taxation at the rate levied upon other property and also local, county and municipal taxation. The effect of this was to increase the rate of taxation of the plaintiff in error from seventy-five cents on the hundred dollars to about two dollars and thirty-seven and one-half cents on the hundred dollars.

Tha State Board of Valuation and Assessment having assessed plaintiff in error for taxation for the years 1893 and 1894 under the act of November 11, 1892, and certified the assessment to the clerk of the Daviess County Court, who in turn certified it to the tax collector of the City of Owensboro, said tax collector was proceeding to levy upon and sell the property of plaintiff in error, when, on the 10th day of October, 1894, it instituted this action in the Daviess Circuit Court, seeking to enjoin the collection of said taxes.

The city of Owensboro filed a demurrer to plaintiff's petition and upon hearing the said court sustained the demurrer and dismissed the petition. From this judgment the plaintiff prosecuted an appeal to the Court of Appeals of Kentucky, the highest court of the State, seeking to reverse the judgment of the Circuit Court. Upon hearing on the appeal the said judgment was affirmed; and a writ of error is now prosecuted to this Court, seeking to reverse the judgment of the said Circuit Court and Court of Appeals.

ERRORS.

The errors specially relied upon in this Court are as follows:—

1. "The courts below erred in holding that the Act of the General Assembly of Kentucky, approved May 17, 1886, commonly known as the 'Hewitt' Act, and its formal acceptance by plaintiff in error did not constitute an irrevocable contract between the plaintiff in error and the Commonwealth of Kentucky.

2. "The courts below erred in holding that the repeal of said Act of May 17, 1886, terminated the right of plaintiff in error to immunity from local, municipal and county taxation."

ARGUMENT.

We do not deem it necessary to attempt an elaborate argument of these questions in view of the numerous other arguments made in similar causes now pending in this Court, and especially in view of the fact that by agreement filed in this cause and by order of this Court the briefs for plaintiffs in error in the other bank tax causes are to be considered and taken as briefs for plaintiff in error in this cause.

The power of the legislature of the State to exempt specific property from the general burdens of taxation was long an established doctrine in Kentucky. See Johnson v. Commonwealth, 7 Dana, 339; Citizens' National Bank v. city of Paducah, 10 Ky. L. R. 221; Franklin county v. Deposit Bank, 87 Ky. 212; National Bank v. Covington, 21 Fed. Rep. 484.

In relinquishing its contended right under its charter to a lower rate of taxation and in accepting the higher rate provided in the "Hewitt" Act and in paying said higher rate to the State under said act, the plaintiff in error gave, and the State received, a valuable consideration.

The Court of Appeals of Kentucky had established the doctrine that where a valuable consideration had passed from the grantee to the State the rights acquired under the grant became vested rights in the remaining of the proviso of the Act of February 14, 1856, which is section 8 of chapter 68, of the General Statutes of Kentucky, quoted above, and referred to in the "Hewitt" Act, and this doctrine had become a rule of property in Kentucky, and the subscribers and holders of shares of stock in plaintiff bank purchased in reference thereto, and had the right to rely upon it as a rule of property. See Sinking Fund Commissioners v. Green and Barren River Navigation Company, 79 Ky. 73, decided in 1880, and Commonwealth v. Railroad companies, 95 Ky. 60, decided in 1893.

Under the rule thus established by the highest court in the State, we contend that while the reservation in the "Hewitt" Act gave the legislature the right to repeal that act, it did not give the legislature the right to annul the contracts made under it. That the banks then in existence which accepted the provisions of that act, according to its terms, acquired the right to the immunity provided during the existence of their respective charters, and the attempted abrogation of that right was a violation of the tenth section of Article I. of the Constitution of the United States.

In the various charters of the banks in Kentucky were provisions exempting them from local taxation upon payment of a special rate to the State. This rate, while not the same in all cases, was generally, as in plaintiff's case, fifty cents on the hundred dollars, and this was more than other kinds of property were paying to the State.

It is a matter of common history in Kentucky that at and prior to the passage of the Hewitt law there was a widespread public sentiment in favor of subjecting bank capital to local

taxation. To say the least of it, the power of the legislature to do this was in dispute and in doubt. The power of the legislature to exempt property from taxation and to bargain away the taxing power of the State was established, and regardless of the effect upon subsequent charters of the Act of 1856, there were a number of banks in the state operating under charters, granted prior to that act. The State, desiring to increase its revenues, and at that same time, place all the banking capital of the State on an equality as to taxation, by the passage of the Hewitt law extended to the banks a proposition to set the whole matter at rest during the life of all existing charters by entering into a mutual agreement and contract in the most solemn and binding form, wherein the banks, on their part, should waive their lesser rates and undertake to pay to the State a greater rate of taxation, and the State, on its part, should agree that the banks should be exempt from local taxation during the term covered by the contract. The banks accepted the State's proposition and entered into the contract in solemn form, and filed the same in the archives of the State. Not only this, but the banks paid and have continued to pay the increased rate of taxation. Now comes along the State and claims that the contract was not binding on it. That at its pleasure it could abrogate the contract. That having inveigled the banks into surrendering their tax exemptions, secured to them in their charters, it now had, by a species of legislative legerdermain, the right to tax them at will. The sleight of hand performance by which this is claimed to have been accomplished was the insertion in the "Hewitt" Act of the celebrated sixth section, which is in the following innocent words:

> SEC. 6. "This act shall be subject to the provisions of section 8, chapter 68 of the General Statutes."

The act referred to is what is known in Kentucky as the Act of 1856, and is quoted in full in the statement. By this act charters and grants to corporations are made subject to amendment or repeal "unless a contrary intent be therein plainly expressed."

Now take the fourth section of the "Hewitt" Act and let us see if an intent contrary to the right of the State to amend or repeal is not plainly expressed. Said section is as follows:

> SEC. 4. "That each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of its stockholders at a regular or called meeting thereof, may *give its consent* to the levying of said tax, and agree to pay the same as herein provided, and to *waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation*, which *consent* or *agreement* to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the Governor of this Commonwealth; and upon such *agreement* and *consent* being delivered and *in consideration* thereof, such bank and its shares of stock *shall be exempt from all other taxation whatsoever* so long as said tax shall be paid *during the corporate existence of such bank.*"

Is this not a contract? Is not the intent to continue this contract during the corporate existence of the banks accepting it, plainly expressed? The banks have entered into a contract with the State wherein they surrender whatever rights or claims they may have had to a lower rate of taxation, and agree and bind themselves to pay a higher rate, in return for which the State undertakes that they shall enjoy immunity from local taxation during the existence of their respective charters. The banks perform their part of this contract, they pay the higher

rate of taxation, and they surrender their charter and constitutional rights to a lower rate. The State accepts the surrender and takes the money and then refuses to perform the only thing that constituted its part of the agreement, viz: to give the banks immunity from local taxation during their corporate existence. Does this not strike the Court as abhorent to good conscience?

It may be asked why was section 6 incorporated in the "Hewitt" Act. To this we think it sufficient to say that it often happens that meaningless provisions are incorporated in statutory legislation. The idea of the retention, on the part of the State, in the act itself, the right to repeal the "Hewitt" Act at its pleasure, and also to abrogate the contracts made under it, and to destroy all the rights acquired under those contracts, is repugnant to the entire aim and scope of the act. This section was doubtless grafted on the original bill as an amendment, and, being considered as meaningless in connection with the plain terms of the bill, was allowed to remain.

On the faith of the rule of property established by the Kentucky Court of Appeals the public have been induced to invest their means in the stock of these banks, and to allow the abrogation of that rule and the destruction of the contract based upon it, would work that species of injury that the Constitution of the United States was intended to prevent in providing against the impairment of contracts.

This plaintiff in error was organized prior to the passage of the "Hewitt" Act under a special charter approved May 12, 1884, and continuing for a period of thirty years. By the terms of its charter, it was required to pay fifty cents on each one hundred dollars of its capital stock in the way of taxation, and was exempted from all other taxation. It accepted, in due form and proper time, the provisions of the "Hewitt" Act, all of which appears by proper averment in the petition. On the faith

of this contract money has been invested, and its abrogation will entail loss and hardships upon those who relied upon the rule of property established by the courts of Kentucky. We think justice as well as the rules of law require the reversal of the judgment in this case, and we so ask.

EQUALITY AND UNIFORMITY OF TAXATION UNDER THE FORMER CONSTITUTION OF KENTUCKY.

Since writing the foregoing, we have been informed that the question was raiseed in the oral argument of these cases in this court as to whether under the former constitution of Kentucky, the doctrine of equality and uniformity of taxation obtained, the idea being, we presume, that if that doctrine did obtain, the legislature of the State had no power to tax the banks against their consent at a higher rate than other property of the same kind, to-wit, money capital, was taxed, and that the consent of of the banks to be thus taxed under the Hewitt law constituted a valuable consideration for the immunity therein guaranteed, and takes these cases out of the class of mere gratuitous exemptions which the State could rescind at pleasure.

We shall endeavor to show that the doctrine of equality and uniformitydid exist, in all its force, under the former Constitution of Kentucky, and was upheld by a long and unbroken line of decisions.

Two provisions in the Constitution of Kentucky in force at the time of the passage of the "Hewitt" Act were held by the courts of that State to secure and guarantee uniformity and equality of taxation. These provisions are Sections 2 and 14 of Article 13, which article is designated the "Bill of Rights," and are as follows:

SEC. 2. "That absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a Republic, not even in the largest majority."

SEC. 14. "No person shall for the same offense be thrice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to a public use without the consent of his representatives, and without just compensation being previously made to him."

The above quotations are from what is known as the third Constitution of Kentucky, which was adopted in 1851. The same provisions were in the second Constitution of Kentucky, and under that Constitution, in 1840, the great leading case establishing the doctrine of equality and uniformity of taxation was decided. This is the case of the City of Lexington v. McQuillan's Heirs, 9 Dana 513. In this case on pages 516 and 517 the court say:

"The power of taxation is in our judgment limited by some of the declared ends and principles of the fundamental law. Among those political ends and principles, equality, as far as practicable, and *security* of property against irresponsible power, are eminently conspicuous in our State Constitution. An exact equalization of the burden of taxation, is unattainable and utopean. But still there are well defined limits within which the practical *equality of the Constitution* may be preserved, and which therefore should be deemed impassable barriers to legislative power *Taxation may not be universal, but it must be general and uniform.* * * * * * * * The legislature, in the plenitude of its power, cannot have constitutional authority to exact from one citizen, or even one county, the entire revenue for the whole Commonwealth. Such an exaction, by whatever name the legislature might choose to call it, would not be a tax, but would undoubtedly be the the taking of private

property for public use and which could not be done constitutionally, without the consent of the owner or owners or without retribution of the value in money. * * * * * * * * * * And although there may be a discrimination in the subjects of taxation, still persons of the same class, and property of the same kind, must generally be subjected alike to the same common burden. This alone is taxation, according to our notion of constitutional taxation in Kentucky. And this idea, fortified by the spirit of our Constitution, is, in our judgment, comprised by so much of the twelfth section of the tenth article as declares 'nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.'"

This decision has been followed and approved by the Court of Appeals of Kentucky in a long line of decisions from that date down to 1887. See Louisville v. Hyatt 2 B. M. 178; Louisville v. Hyatt 5 B. M 199; Cheaney v. Hooser 9 B. M. 339; Slack v. R. R. Co., 13; B. M. 103; County Judge v. R. R. Co., 5 Bush 229; Bradley v. McAtee 7 Bush 672; Howell v. Bristol 8 Bush 497; C. & O. R. R. Co., v. Barren Co., 10 Bush 613; Preston v. Roberts 12 Bush 586; R. R. Co. v. Com'lth 81 Ky. 501; Barbour v. Louisville 82 Ky. 657; Graham v. Conger 85 Ky. 589; Marshall v. Donovan 10 Bush 683.

Under the Constitution of 1851, under which the Hewitt law was passed, the Court of Appeals of Kentucky, in 1883, decided the case of Cin. N. O. & Texas Pacific R. R. Co., &c. v. The Commonwealth, 81 Ky. 492. On page 501, after quoting the second section of the Bill of Rights, above quoted, the court say:

"The legislature has no such power as to discriminate between the citizens by making one or more assume the entire burden of taxation, and exempt the others. Approximate equality in distributing the burden, and *uniformity* in

the mode of assessment, is the cardinal rule, and as said by this court in the case of the City of Lexington v. McQuillan's heirs, that while taxation may not be universal, it must be general and uniform. *Equality, such as is practicable, is essential to constitutionality of taxation.* * * * * * * * From the case of the City of Lexington v. McQuillan's heirs, decided in the year 1840, and in the intermediate cases including the case of Preston v. Roberts, decided in 1877, this court has *held the rule as to uniformity and equality to be fundamental*, and have gone perhaps as far as any State in the Union in protecting the citizens against oppressive taxation."

This opinion is by Judge Pryor, the able and honored Chief Justice who wrote the opinion in the first bank tax cases under the present law, decided by the Kentucky Court of Appeals.

The Court's attention is called to the fact that in the "Hewitt" Act itself (section 4) there is express legislative recognition that the higher rate of taxation therein provided could not be imposed without the consent of the banks, and so it was provided that they should so consent in writing under seal, &c. The contention now made by opposing counsel that the legislature had the authority to impose upon the banks this higher rate of taxation without their consent is not consistent with the construction the legislature put upon its authority in framing the "Hewitt" Act.

So it will be observed that in entering into the contract under the Hewitt law, the banks did more than surrender the lower rate of taxation provided in their respective charters, and which it is now contended the State had the right to revoke at pleasure, and that in addition thereto they agreed and consented in writing to submit to a greater rate of taxation than the State had the constitutional authority to impose upon them, and thus paid a valuable consideration to the State for the protection promised. This, we submit constitutes such *vested rights* as cannot

be destroyed by the State under the reservation contained in the Act of 1856. The banks purchased from the State this protection from local taxation, as much as they purchased the notes and bills held by them from their customers, and it is as much a violation of the Federal Constitution for the the State to undertake to abrogate one contract as the other.

This distinction, we submit was lost sight of in the decision of these cases by the Kentucky Court of Appeals, and also by Judge Taft in his decision of other cases now in this Court.

But we submit that this distinction is conclusive of the question and, on it, we confidently ask a reversal.

It may be urged that bank stock constitutes a distinct class of property, and that under the former constitution the legislature had the right to tax one class of property higher or differently from another class. But bank stock does not in this sense constitute a separate class of property. It is simply money capital employed in a certain capacity, and does not differ in kind from other money capital. Money employed in running a bank could not be taxed higher or differently from money employed in running a farm or a factory.

Respectfully,

J. A. DEAN,

For Plaintiff in Error.

APPENDIX.

CHAPTER 1412.

AN ACT to incorporate the Citizens' Savings Bank of Owensboro.

Be it enacted by the General Assembly of the Commonwealth of Kentucky.:

SECTION 1. "That there is hereby established a bank of discount and deposit in the City of Owensboro; and the subscribers, their associates, successors, and assigns, shall be a body-politic and corporate, by the name and style of the 'Citizens' Savings Bank;' and shall be capable of contracting and being contracted with, of suing and being sued, of impleading and being impleaded, and of answering and defending, in all courts and places whatever; it may have a common seal, and change and renew the same at pleasure.

SEC. 2. "That said bank may be under the control and direction of three or more directors, to be elected by the stockholders, and shall serve one year, or until their successors shall be elected and qualified. The directors may select, annually, a president from their number. The stockholders may meet and elect the said three or more directors when five hundred shares shall be subscribed, and fifty per cent. thereof paid: J. H. Hickman, J. M. Fetter, E. J. Halsey, J. D. Powers, W. C. Nones, P. T. Watkins, and J. B. Alexander, or any two of them, may, at such time, place, and in such manner as suits their convenience, open books for subscription for the capital stock, which shall be in shares of fifty dollars each; and said corporation may commence business so soon as the said fifty per cent. of five hundred shares have been paid in, and the president or cashier shall have made

oath to the fact of such payment before some judge, justice, or notary.

SEC. 3. "That the directors shall have power to receive subscriptions for so many shares of the stock of said company remaining unsold as they may, at any time, choose to sell; to declare dividends of the profits arising out of the business; and to appoint such officers, agents, and servants as they may deem necessary to conduct the business of the bank, and pay them such sums as wages and salaries, and take from them such bonds to secure the faithful performance of their duty, as they may think reasonable and proper. In case of the death or resignation of any director, the vacancy can be filled by the board of directors. The stock shall be deemed personal property, and shall be assignable only on the books of the bank, upon such rules as the board of directors shall, from time to time, establish; but said corporation shall have a lien on the stock to secure any indebtedness by the stockholder, as principal or otherwise, to said corporation. For the contracts of the corporation each stockholder shall be individually responsible to the amount of stock held by him in said corporation. The capital stock of said bank may be increased, from time to time, to two hundred and fifty thousand dollars, as the president and board of directors may deem advisable and proper, but not to exceed that amount.

SEC. 4. That said bank may transact business as a natural person; may loan money, discount promissory notes or bills of exchange; may buy and sell gold and silver coin, exchange stocks or other securities, and all other evidenceis of indebtedness; and may do a general Banking business, except that it shall not have power to make or issue notes of its own. The promissory notes and the bills of exchange made negotiable and payable at its banking-house, or at any other banking-house, when discounted by this bank, shall be,

and they are hereby, put upon the same footing of foreign bills of exchange; and like remedy may be had thereon, jointly and severally, against the makers, drawers, and indorsers. The said bank shall have the power to make advances on approved securities, upon agricultural products, including growing crops, and upon all manufactures and fixtures as personal property. It may receive in pledge, or as security for money loaned or debts owing it, bonds, stocks, produce and merchandise, United States vouches, certificates or bonds of indebtedness, or the bonds of this or any other State, city, or county, or company incorporated by the United States or any State, and sell the same on the non-payment of the debt or demand by ordinary course of judicial proceedings.

SEC. 5. "That said bank may receive deposits of gold, silver, bank notes, or other notes which may be circulating as money, and repay the same in such manner, at such times, and with such interest, as may be agreed upon with the depositors by special or general contract. Said bank may receive deposits from minors and married women, and the receipts and acquittances of such minors and married women shall be valid.

SEC. 6. "That the said bank may acquire, hold, possess, use, occupy, and enjoy all such real estate, goods and chattels, as may be convenient for the transaction of its business, or to further the objects of its creation, or which may be conveyed to it as surety for any debt, or purchased to aid in the satisfaction of any debt, judgment or decree, and sell and convey the same: and said bank may make such by-laws for their government as they may deem nesessary, provided the same be not contrary to the Constitution and laws of this State or of the United States.

SEC. 7. "That it shall be the duty of the cashier, on the first day of January, in each year, to pay into the State Treasury, for the benefit of revenue proper, fifty cents on each one hundred

dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus thereon of every kind.

SEC. 8. "That if the cashier, or a clerk, teller, or other officer of said bank, shall appropriate any of the funds to his own use, or shall willfully fail to make correct entries on the books of the bank, with intent to cheat or defraud the corporation, or any other person, or to conceal any improper appropriation of funds, the officer so offending shall be deemed guilty of felony, and shall, upon conviction thereof, be confined in the jail and penitentiary of this Commonwealth for a period of not less than two nor more than twenty years.

SEC. 9. "That it shall not be lawful for said bank to issue any note or bill to be passed or used as currency.

SEC. 10. "That this act shall take effect from its passage, and continue in force thirty years."

Approved May 12, 1884.

No. 669.

FILED
MAR 10 1899
JAMES H. McKENNEY
Clerk.

Brief of Ellis for P. C.

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Mar. 10, 1899.

No. 669 and the three other Cases heard with it.

Citizens' Savings Bank of Owensboro, Plaintiff in Error.

vs.

City of Owensboro and A. M. C. Simmons, Tax Collector, } Defendants in Error

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BRIEF FOR PLAINTIFF IN ERROR.

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(1) The Constitution of Kentucky, in force at the date of the passage of the Hewitt Act, *required equality and uniformity* of taxation.

(2) The Act of 1856, as uniformly construed by the Court of Appeals of Kentucky, does not apply where the State and the citizen meet on a basis of bargain and consideration.

(3) The Act of November 11, 1892, under which the taxes in these cases are sought to be collected is void for inequality.

J. A. DEAN,
Counsel.

W. T. ELLIS,
Associate Counsel.

HOWARD PRINTING CO., OWENSBORO, KY.

Supreme Court of the United States

OCTOBER TERM, 1898.

CITIZENS' SAVINGS BANK, OF OWENSBORO, ... } . . . *Plaintiff in Error,*

vs.

CITY OF OWENSBORO AND A. M. C. SIMMONS, TAX COLLECTOR, } . . *Defendants in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

The authorities cited herein and the comments based upon them, apply to each of the other three Owensboro Bank Cases with which this case was heard, and I respectfully request that this brief be received and treated as a part of my argument in all four of the cases.

THE CONSTITUTION OF KENTUCKY IN FORCE AT THE PASSAGE OF THE HEWITT LAW IN 1886, REQUIRED UNIFORMITY AND EQUALITY OF TAXATION.

At the oral argument of these cases I insisted that the Constitution of Kentucky in force at the date of the passage of the

Hewitt law, required both uniformity and equality of taxation and that the present Constitution of the State did not establish a new doctrine, or a different rule on this subject from the rule which obtained under the Constitution in force at the date of the passage fo the Hewitt act. I also contended in oral argument and will now try to show that while the previous Constitution of the State of Kentucky did not in words declare that taxation should be uniform and equal, the language of that instrumeut had been uniformly interpreted by the highest court of the State to mean that taxation, in order to be valid, must be equal and uniform.

If this proposition can be successfully maintained, it follows that when the banks contracted with the State to pay a higher rate of tax than was imposed on any other class of property, the agreement became a valid and binding contract because supported by a sufficient consideration, and on this point alone the contention of the banks should be sustained.

Counsel for defendants in error, in their oral argument contended that the rule of equality and uniformity did not obtain under the previous Constitution of the State and that the Legislature had a right to impose an unequal tax burden upon bank capital: hence it was insisted that the State had a right to tax bank capital in excess of the rate of taxation imposed upon other classes of personal property. I will try to point out briefly the accuracy of my contention and the error of opposing counsel on this particular point.

The Constitution of Kentucky in force on the 17th day of May, 1886, which was the date of the passage of the Hewitt law, contains these provisions: Article 13, section 1 of the Constitution of Kentucky adopted in 1850, and which remained in force until 1891, provides:

"That all freemen, when they form a social compact, are

equal, and that no man or set of men are entitled to exclusive, separate public emoluments or privileges from the community but in consideration of public services."

Section 30 of the same Article provides as follows:

"To guard against the transgression of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of the Government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this Constitution shall be void."

And the latter clause of section 14 of the same Article provides as follows:

"Nor shall any man's property be taken, or applied to public use without the consent of his representatives and without just compensation being previously made to him."

Section 2 of the Bill of Rights declares:

"Absolute arbitrary power over the liberty and property of the citizen exists nowhere in this republic, not even in the largest majority."

The foregoing sections of the Constitution of the State of Kentucky adopted in 1850, except the last section quoted, are identical with the provisions contained in the second Constitution which was adopted in 1799.

These provisions of the organic law of the State have undergone judicial construction time and again and the decisions have always been to the effect that a tax to be valid *must be equal and uniform*.

The first case to which I invite the Court's attention is that of Sutton's heirs v. the City of Louisville, reported in 5 Dana,

28. This was a suit relating to a tax for street improvements, and the Court was, in that case asked to construe the sections of the Kentucky Constitution above quoted, which it did, and held as follows:

> "The object of those fundamental provisions was to preserve, as far as may depend on the practical operations of government, a just equality among all the constituent members of the body politic. And it seems to us that the spirit and end of the Constitution, as thus announced, will be frustrated to some extent, or must be unwarrantably if the judgment in this should be deemed constitutional.
>
> "The assessment against the plaintiffs must be considered either *as a tax on them or as an appropriation of their property to public use without their consent;* and in either of these aspects of it, can it be sustained as consistent with the Constitution?
>
> "If it be a tax—is there no limitation on the power of taxation, and has not some constitutional principle been violated? The State Constitution contains no express restrictions on the taxing power. But, nevertheless, this power cannot be, in all respects, arbitrary and unlimited.
>
> "The nature and object of taxation and the spirit and justice of equality which pervades the Constitution and is consecrated by the foregoing first section of the 10th Article necessarily prescribe an *impassable boundary to this*, which, more than any other legislative power, is constantly exercised and felt, and is always liable to be perverted and abused. And that limit is, that a *common burden should be sustained by common contributions, regulated by some fixed general rule, and apportioned according to some uniform ratio of equality.*

In the case of the City of Lexington v. McQuilkan's Heirs, 9 Dana, 516, The Court of Appeals again construed the then Constitution of the State as requiring uniformity and equality.

After deciding that the amount of taxes, whether direct or indirect, ad valorem or specific, were questions confined by the Constitution to the legislative department, the Court says :

> "But in some other respects, and so far as the power of taxation may be effectual without being thus limited, it is in our judgment, limited by some of the declared ends and principles of the fundamental law. Among these political ends and principles, *equality, as far as practicable, and security of property against irresponsible power are eminently conspicuous in our State Constitution.* An exact equalization of the burdens of taxation is unattainable and utopean. But still there are well defined limits within which the practical equality of the Constitution may be preserved, and which therefore, should be deemed *impassable barriers to legislative power.* Taxation may not be universal, but it must be general and uniform. Thus, if a capitation tax be laid, none of the class of persons thus taxed can be constitutionally exempt upon any other ground than that of public service ; and, if a tax be laid on land, no appropriated land within the limits of the State can be constitutionally exempted unless the owner be entitled to such immunity in consequence of public service. The Legislature, in the plentitude of its taxing power, cannot have constitutional authority to exact from one citizen or even one county, the entire revenue for the Commonwealth."

The Court in the case supra clearly lays down the rule that a tax on property, to be valid, must be uniform. The Legislature did not possess unlimited power to discriminate, but if it levied a tax on any class of property, that tax to be valid must necessarily be equal and uniform. The tax which the Legislature was levying upon the banks under the Hewitt law was a tax on money, or invisible personal property, and it had no constitutional power to levy a higher rate of tax on the money or invisible per-

sonal property of the banks than it had on the same class of property in the hands of the individual citizen.

Sustaining this view, the Court of Appeals of Kentucky, in Broadway Baptist Church, &c., vs. McAtee, &c., 8 Bush, 513, says:

> "The law making power has always exercised the right without question of determining the proper subjects either of general or local taxation, and we conceive that it is not within the province of the Courts to abridge this legislative prerogative, etc." * * * * * * "When the subjects of taxation have been determined, the constitutional limitation requiring *equality and uniformity* in its imposition upon such subjects applies, and the Courts are bound to see that this limitation is not disregarded."

Again in Howell, &c., vs. Bristol, 8 Bush, 499, the Court says:

> "A law imposing taxation on the general public, the evident intent and legitimate result of which is to equalize the burden so far as practicable, will not be held as violative of the fundamental law merely because that desirable end may not be attained. But when, as in this case, the most probable if not the necessary consequence of the law is to produce the most oppressive inequality, and to compel a small minority of tax-payers to provide at their sole expense an improvement for general utility and public interest, * * * * * * it assumes the character of an attempted exercise of 'arbitrary power' over the property of this minority, etc. * * * * * No such power over the property of the citizen can be constitutionally exercised by any department of our state government; and whenever it is attempted it is the imperative duty of the judiciary to interpose in behalf of those whose constitutional rights are being thereby prejudically affected."

The next case to which I invite the Court's attention, is that of Marshall vs. Donovan, &c., 10 Bush, 691. Beginning with the last sentence at the bottom of this page the Court says :

> "As a general proposition, taxation to be constitutional must be as nearly as practicable *equal and uniform*. To this general rule, however, there are well recognized exceptions. *Where all are alike benefitted by the taxation the burden should be a common one*, but where the benefits are special and peculiar, the contributions may be so laid as to exempt from taxation those persons who are by the law itself excluded from all participation in the advantages which are expected to arise from the system, etc. * * * * It is under this principle of discrimination that assessment for the opening, making, improving, and the repairing of streets, etc. * * * * and like works of *local public utility* are made to depend to some extent upon the supposed benefits which the *local community* * * will receive."

In the case of Preston vs. Roberts, &c., 12 Bush, 585, which was a case involving equality of taxation in the matter of street improvements, the Court says :

> "That there shall be equality, *as far as is reasonably practicable in the distribution of public burdens, whether local or general, is a cardinal principle in the law of taxation, and flagrant departures from that rule ought not to be allowed, unless a more equal distribution is under the circumstances unattainable.*
>
> "The gross inequality in this case appears on the face of the petition : *and as such inequality is violative of a settled rule* that such burdens must be approximately equal, if such equality can reasonably be attained, the inquiry arises whether there is anything in this record presenting for decision the question whether there is inequality, and if so whether this Court has power to correct it."

The Court then proceeds to hold that the inequality complained of appeared on the face of the petition and that the judgment was based upon an assessment which in itself was unequal and for that reason it was erroneous and the assessment void.

In the case of Livingston, &c., vs. City of Paducah, 80th Ky. 656, the question was as to the power of the municipality to levy a special tax upon the owners of vehicles and on which they had paid an ad valorem tax equal to that assessed against other personal property in the city. In passing upon that ques- the Court says:

> "Under any system of taxation that may be devised, an exact equalization of the burdens of taxation is unattainable and eutopian. Approximate equality being all that is practicable, and in many cases, especially where two or more systems of taxation are combined, duplicate taxation results incidently and is unavoidable. It is, therefore obvious that, to declare every tax law invalid because it operates to some extent unequally and incidentally imposes double taxes, would defeat all taxation. * * * * * It is only when statutes are passed which impose taxes on false or unjust principles, or operate to produce gross inequality so that they cannot be deemed in any sense proportioned in their effect on those who are to bear the public charges, that Courts can interfere and arrest the course of legislation by declaring such enactments void."

Then the Court proceeds to hold that in every case where there is an intentional discrimination and where an unequal and an unjust burden is imposed upon one class of property as against the tax imposed upon other classes of property, that such a statute is unconstitutional and void.

In Railroad cases v. the Commonwealth, reported in 81 Kentucky, 492, the railroads insisted that the mode of assessment or valuation of their property for taxation under a certain statute

was in conflict both with the Constitution of the United States and the Constitution of Kentucky in that that it imposed an unequal burden upon the railroads, and in passing upon that complaint the Court of Appeals quoting Mr. Cooley on Taxation with approval says :

> "Certain elements are essential in all taxation. It does not necessarilly follow because the power is so vast that everything which may be done under the pretense of its exercise will leave the citizens without redress, even should there be no conflict with any express constitutional inhibition."

The Court then quotes section 2 of the Bill of Rights which was in force at the date of the passage of the Hewitt act, which is as follows :

> "Absolute arbitrary power over the liberty and property of the citizen exists nowhere in this republic, not even in the largest majority."

Citing this constitutional provision the Court says :

> "The Legislature has no power to discriminate between the citizens, making one or more assume the entire burden of taxation and exempt the others."

The Court then quotes with approval the case of the City of Lexington v. McQuillan's Heirs, already cited, and reaffirms the doctrine of uniformity and equality announced in that case in these words :

> "That there shall be equality, as far as is reasonably practicable, in the distribution of public burdens, *whether local or general, is a cardinal principle in the law of taxation*,

and flagrant departures from that rule ought not to be allowed, unless more equal distribution under the circumstances is *not* attainable."

The cases mentioned above embrace the period from 1838, down to and including 1883. I can state with perfect confidence that under every Constitution of the State from the date of its admission into the Union in 1792, down to the adoption of the present Constitution in 1891, as often and uniformly construed by the highest Court of the State, equality and uniformity of taxation was essential to its validity, if the rate was palpably unequal the tax was void. Any law providing for the assessment of property wherein an intentional discrimination against any class of property is provided for, has always been declared to be void by the Kentucky Court of Appeals.

This brings the Court to the distinct and sharp question: Did the Legislature of the State when it enacted the Hewitt law, possess the power under the Constitution of the State to levy a higher rate of taxation upon money invested in the business of banking than was imposed upon money invested in agriculture, in the various industrial and commercial pursuits, or held as idle capital in the hands of individuals? We answer it did not.

If this is a sound position, when the banks were invited by the State to enter into a contract to pay 75 cents on each $100 of their capital stock, which was 50 per cent. in excess of the rate of taxation fixed upon other moneyed capital of the State, and the same rate on their surplus, as was paid by other property, when the banks accepted that proposition, it became a completed contract based upon a sufficient consideration—a contract from which the State could not retire without the consent of the banks entering into the agreement.

WHAT THE LEGISLATURE UNDERSTOOD AT THE TIME IT PASSED THE HEWITT LAW.

That the Legislature, which enacted the Hewitt law, well understood it had no power to impose upon the moneyed capital of banks a higher rate of taxation than that imposed on money employed in other enterprises, or in the hands of individuals, is perfectly manifest from section 7 of the Hewitt act which provides:

> "If any bank, State or National, shall refuse or fail to pay the tax imposed by this act, or shall fail or refuse to make the consent and agreement as prescribed in section 4, the shares of stock of such bank, institution or corporation and its surplus, undivided accumulations and undivided profits, shall be assessed as directed by section 2 of this act (that is, assessed as all other real and personal property of the State were directed to be assessed) and the same taxes, State, county and municipal, shall be imposed, levied and collected upon the assessed shares, surplus, undivided profits, and undivided accumulations as is imposed on the assessed taxable property in the hands of individuals, etc."

It is clear enough from this section that the Legislature recognized there was a limitation on its powers to tax shares of stock, in banks and that that limitation resided in the then Constitution of the State. If the banks had failed to accept the terms of the contract, as proposed by the State, their shares of stock and surplus would not have been subject to the tax imposed in the Hewitt law, but to the same rate of tax imposed upon all other classes of property subject to taxation, except as they may have been exempt by the terms of their charters. This section 7 is a plain admission on the part of the

Legislature that it was without power to impose the tax proposed in section one of the Hewitt law, unless the consent of the banks to be thus taxed could be obtained. Recognizing this, the law makers, with the greatest particularity, required the banks, with the consent of their stockholders, to enter into the contract, and when they had consented to the agreement they must *consent in writing* which was to be *certified under the corporate seal* of the banks to the Governor of the State.

To argue as defendents in error do, that notwithstanding this the State might withdraw from the agreement at pleasure, is to argue not only that the State is not obliged in good faith to keep its agreement, but to convict the representatives of the State and the banks of having done a vain and foolish thing in entering into the agreement at all.

The Court will not fail to see that the contention of these political corporations now insisting upon the State's right to withdraw from the contract is not only without any equity whatever, but in bad faith and if sustained it would be to encourage parties to violate rather than to perform in good faith their contracts, though entered into in the most solemn form. The banks had the right to rely that the State would, in good faith, perform its agreement, and acting upon that belief they accepted its proposition, and the agreement thus entered into should be carried out.

THE CONSIDERATION FOR THE CONTRACT BETWEEN THE BANKS AND THE STATE.

If there was any valuable consideration moving from the banks to the State in the agreement entered into between the con-

tracting parties, it will be upheld regardless of the adequacy of consideration paid or agreed to be paid. The several elements of consideration entering into the contract between the State and the banks may be stated as follows:

1st. The banks agreed to pay a higher rate of taxation than was imposed on any other property at the date of the passage of the law, and a higher rate than the Legislature could have legally imposed except the banks agreed to pay such rate in consideration that they were to be exempt from local taxation.

2d. The banks contracted with the State that they would continue to pay the rate named in the Hewitt law no more and no less, during the rest of their corporate existence, no matter how low the tax rate on other property might be reduced. They agreed in addition to this to pay the same rate on their surplus that might, from time to time, be imposed on other classes of property. No matter how the tax rate might fluctuate the banks were bound by the rate named in the contract.

3d. Under the contract the banks agreed with the State that the shares of their capital stock, for the purpose of taxation, should remain during the rest of their corporate existence at par. They agreed further that their capital stock, for the purpose of taxation, should continue to be worth 100 cents to the dollar, and they guaranteed that they would keep it at that rate, though the commercial or market value of the stock might decline to 25 cents or even 5 cents to the dollar.

4th. When the contract was executed and delivered they paid on the spot, taxes as provided in section one from the date of the passage of the law, although by the terms of that act other tax payers were not subject to its provisions until after the expiration of one year from its passage.

5th. The banks not only contracted to pay a rate of tax, on their capital stock, 50 per cent. in excess of the rate imposed on

all other classes of property, but they expressly stipulated with the State, if their stock for any cause became worth more than 10 per cent. above its face value, that such excess should be subject to the same rate of taxation as was imposed on other property.

They contracted with the State not only to keep their capital stock at par for the purpose of taxation, but agreed that their capital stock should, at no time, for the purpose of taxation, possess a higher value than 10 per cent. above its par value, and agreed if, from prudent management, or from any other cause the value of their capital stock in the open market should advance more than 10 cents above par, that such excess should be subject to the same rate of taxation as might from time to time be imposed on other classes of property.

If anyone of the foregoing five propositions is true it constitutes an adequate consideration for upholding the contract: that they are all true is, I believe, self evident when considered in connection with the plain terms of the contract itself.

TOMLINSON vs. JESSUP, 15 WALLACE, 454.

The Court of Appeals, in its decision in these cases, relies upon the above case as an authority showing that the Legislature had the right to repeal the contract entered into between it and the banks under the Hewitt law. But a careful examination of the facts of that case will show that so far from being an authority supporting the conclusions reached by the appellate Court, it in no proper sense sustains its conclusions.

The facts in Tomlinson vs. Jessup, briefly stated are:

(1) The Legislature of South Carolina, in 1851, chartered the Northeastern Railroad Company for a term of 50 years.

(2) At that time a general law of the State, passed in 1841, provided that the charter of every corporation subsequently granted and any renewal, amendment or modification thereof should be subject to amendment, alteration or repeal unless the charter "*in express terms exempted it from the operation of that law.*"

(3) The railroad constructed its road and was operating it. In 1855 the Legislature voluntarily, without any consideration whatever, and on its own motion passed an act exempting the railroad from all taxation during the continuance of its charter.

(4) In 1868 the State adopted a Constitution which provided that the property of corporations then existing, or thereafter created should be subject to taxation. Afterwards a statute was passed pursuant to this constitutional provision, which subjected the railroad to taxation. It resisted the collection of the tax on the ground that the act of 1855, which extended to it complete immunity from taxation, was not the subject of amendment or repeal. This Court held that the State, under the general law which was in force at the date of the granting of its original charter, had the authority to repeal the statute under which the exemption was claimed.

Bearing in mind the fact that the act exempting the railroad from taxation was passed after the railroad was a completed and going concern, that it was purely voluntary on the part of the State and that it granted absolute immunity from all taxation to the railroad, the act so exempting the road was but expressive of the *then will of the State* on the subject.

Under the facts of that case, the Legislature would have had the right to repeal the act exempting the road from taxation although there might not have been a general law of the State declaring that all charters and grants should be subject to amendment or repeal. Judge Cooley, in his work on Taxation, page 69, says:

"It is perfectly well settled, however, that an exemption granted from motives of State policy merely, *and where the State and the citizen do not meet on a basis of bargain and consideration, is to be deemed expressive only of the PRESENT WILL OF THE STATE ON THE SUBJECT;* and the law granting it, like laws in general, is subject to modification or repeal, in the legislative discretion, and it is immaterial that while it continued in force parties have acted in reliance upon it."

While this Court held that the Legislature, by reason of the general law, had the power to repeal, I respectfully suggest in view of the authorities cited, the Legislature would have had the right to repeal the act exempting the railroad from taxation at pleasure, because the exemption having been granted "from motives of State policy merely," like all other laws it was the subject of modification or repeal.

Judge Cooley, to sustain the position assumed by him, refers to the case of Baily vs. Maguire, 22 Wallace, 215. The Court will have no difficulty in at once, distinguishing the principals involved in Tomlinson vs. Jessup from the questions involved in the cases at the bar, and will readily perceive that so far from the opinion of the Court of Appeals being fortified by the doctrine of that case, it is in no proper sense an authority sustaining the conclusions reached by the Court of Appeals in these cases.

NEW JERSEY vs. YARD, 95 U. S. 104.

The judgment of the Court of Appeals from which these writs of error are prosecuted is in irreconciable conflict with the doctrine announced in the case supra. The case of New Jersey vs. Yard is in every respect precisely in point with the the cases here except in two points of view which I will mention,

and in these respects the contention of the banks here is more strongly fortified than was that of the railroad in New Jersey vs. Yard.

To bring briefly to the attention of the Court the facts in the New Jersey case in order that a parallel between that and the cases at the bar may be drawn, I state

THE FACTS IN NEW JERSEY vs. YARD.

(1) The Morris & Essex R. R. Co., was chartered by an act of the Legislature of New Jersey, January 29, 1835. The act provided that as soon as the net proceeds of the railroad amounted to seven per cent. on its cost it should pay a State tax of one-half of one per cent. on the cost of the road and no other tax should be levied upon it.

(2) A section of the charter provided that the Legislature had the right to amend or repeal the act whenever it should think proper.

(3) The act was amended March 2, 1836, and the right to amend or repeal was again reserved.

(4) February 14, 1846, the Legislature of New Jersey passed an act in effect the same as the Kentucky act of 1856 relied on in these cases.

(5) On the 23d of March, 1865, the charter was again amended authorizing the railroad to build a branch road and all the rights of the original and amended charters and all franchises therein conferred were embodied in the supplemental act. By the third section of this supplemental act it was provided that it should not go into effect or become binding until the company, in writing under its corporate seal filed in the office of the Secretary of State, accepted the act and this it was required to do

within 60 days after the passage of the law. The company accepted the act within the time limited.

(6) There was nothing said in this supplemental act about the right to amend or repeal the charter, but the general law of the State declaring that all charters should be the subject of amendment or repeal, unless the contrary was expressly stated in the charter, was in full force, hence there was no necessity for reserving the right to repeal in the charter itself.

(7) Afterwards the Legislature of New Jersey passed acts imposing a more burdensome tax on the railroad than that provided in the original and amended charters.

The railroad resisted the collection of this additional tax and the single question was, did the railroad, by the acceptance of the act of 1865, enter into a contract with the State which could not thereafter be repealed during its corporate existence and this Court held that the contract was irrepealable.

The Court said:

> "We have already said since the Legislature which passed the act of 1865, had the power to make a contract which should not be subject to repeal or modification by one of the parties to it without the consent of the other, the main question here is, did they intend to make such contract?"

The Court answered this question in the affirmative, and proceeds in the opinion to discuss the fact of the State's having required the railroad to enter into a written agreement and concludes, that in view of all of these formalities it would be absurd to say that the State was making a contract with the railroad which it might thereafter repeal at pleasure, and so held that the contract was irrevocable.

THE TWO POINTS OF DIFFERENCE BETWEEN THE NEW JERSEY CASE AND THE CASES AT THE BAR.

There are just two points of difference between the New Jersey case and the cases at the bar, and they are

(1) The railroad in the New Jersey case, as far as the record shows, did not agree to pay a higher rate of tax than was imposed on other property, while the banks in these cases did.

(2) In the New Jersey case the right to alter, amend or repeal the charter was not reserved in the charter itself, but was reserved in the general law, while in these cases the right under certain conditions is reserved, in the act.

The contention of the banks in the cases at the bar is stronger than that of the railroad, in this that they expressly agreed to pay a higher rate of tax than was imposed on other classes of property, while the railroad did not, but on the contrary it was exempted from all taxes until its net earnings amounted to seven per cent. The banks were required to pay taxes regardless of their net or gross earnings.

The fact that the right to amend or repeal the charter in the New Jersey case was not incorporated into the charter itself cuts no figure whatever, because the right to amend, alter or repeal was conferred in the broadest terms by the general law itself. The Hewitt act would have been as much the subject of repeal with section 6 entirely omitted as it is with that section inserted. Section 6 of the Hewitt law conferred no other or greater right on the Legislature to alter, amend or repeal the act than it would have had under the general law with section 6 wholly omitted, and this fact is fully recognized in the opinion of the Court of Appeals in these cases.

If the doctrine announced in New Jersey vs. Yard correctly states the rule of law, it is an authority, as I insist, absolutely conclusive of the question of the Legislature's right to tax the the banks in any other mode than that prescribed in the Hewitt act.

A CORRECT READING OF THE HEWITT LAW WITH SECTION 8, CHAPTER 68, GENERAL STATUTES, INCORPORATED INTO SECTION 4 OF THE HEWITT ACT.

The Court will observe that the sixth section of the Hewitt act simply declares that "this act shall be subject to the provisions of section eight (8) chapter sixty-eight (68) of the General Statutes." When the Court examines section eight of chapter sixty-eight, General Statutes, it will at once discover that it cannot pick up that section bodily and anchor it into the Hewitt law. To do so would be to violate the elementary principals that obtain in the construction of the simplest sentences written in the English language. The Court will, therefore, be obliged to insert section eight, chapter sixty-eight General Statutes into the Hewitt law in such fashion as will make the whole act intelligable and at the same time give section eight, the benefit of its full and fair meaning.

I will try to incorporate into section four of the Hewitt act section eight, chapter sixty-eight, so as to make an intelligent reading of the whole. Beginning with section four of the Hewitt law, according to my construction the two sections taken together read as follows:

"That each of said banks, institutions and corporations, by its proper corporate authority, with a consent of a majority

in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky, shall be evidenced by a writing under the seal of such bank, and delivered to the Governor of this Commonwealth, and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as the tax shall be paid during the corporate existence of such bank.

"But any privileges or franchises (if any) that may be granted the banks by this act shall be subject to amendment or repeal at the will of the Legislature, unless a contrary intent is plainly expressed: Provided that whilst privileges and franchises so granted (if any) may be amended or repealed, no amendment or repeal shall impair any vested rights acquired under this act."

There must be some such reading of the two sections as this, otherwise it is impossible to correctly arrive at their true meaning.

Did the Legislature mean by incorporating this act of 1856 into the Hewitt act to declare dogmatically the contract between the State and the banks should be repealable at the pleasure of the State? Did it mean after the contract was signed, sealed, delivered and accepted, the State might the next hour or the next day over the protest of the banks annul the contract? Most certainly not, and yet, this is precisely what opposing counsel are insisting on in these cases.

If the Legislature had so intended it would have been the easiest and simplest thing imaginable to have written in the law "the State shall have the right at any time to repeal this act and annul the contract." The Legislature understood the Eng-

lish language, and if it had intended that the contract should be revokable at the will of the State it would have been so written in law.

Considering the subject with which the Legislature was dealing, the object to be attained, the fact that a greater tax burden was being imposed on money employed in banking than was imposed on any other [redacted] property, the fact that the banks were required to enter into the contract with the greatest minutness of detail and in the most solemn form, points irresistably to the conclusion that the Legislature understood it was making a binding contract and that such was the legislative intent. All this plainly appears on the face of the act.

In view of a uniform line of decisions by the Kentucky Court of Appeals construing the Act of 1856 and which I here cite there is I think, no room to doubt that the agreement entered into between the State and the banks constitutes an irrevokable contract.

DECISIONS CONSTRUING ACT OF 1856.

Sage v. Dillard 15th B. M. 340.

Baldwin v. Comrs Sinking Fund 11th Bush.

Comrs. Sinking Fund v. Green and Barren Nav. Co. 79th Ky. 73.

Franklin Co. Court v. Banks 87th Ky. 370.

Commonwealth v. Railroads 95th Ky. 75.

Commonwealth v. Banks 97th Ky.

A reversal of the judgments in all these cases is asked.

Respectfully,

W. T. Ellis,

Associate Counsel.

J. A. Dean,

Counsel for Plaintiff in Error.

CITIZENS' SAVINGS BANK OF OWENSBORO *v.* OWENSBORO.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 669. Argued February 27, 28, 1899. — Decided April 3, 1899.

The questions raised by the eighth and ninth assignments of error, relating to alleged violations of the Fourteenth Amendment to the Constitution of the United States, are not presented by the record, and do not result by necessary intendment therefrom, and are therefore not considered by the court, under the well-settled rules that the attempt to raise a Federal question for the first time after a decision by the court of last resort of a State is too late; and that where it is disclosed that an asserted Federal question was not presented to the state court, or called in any way to its attention, and where it is not necessarily involved in the decision of the state court, such question will not be considered by this court.

The mere grant for a designated time of an immunity from taxation does not take it out of the rule subjecting such grant to the general law retaining the power to amend or repeal, unless the granting act contain an express provision to that effect.

The act of the legislature of Kentucky of February 14, 1856, and the act of May 12, 1884, c. 1412, incorporating the Citizens' Savings Bank of Owensboro, and the act of May 17, 1886, commonly known as the Hewitt Act, and other acts referred to, did not create an irrevocable contract on the part of the State, protecting the bank from other taxation, and therefore the taxing law of Kentucky of November 11, 1892, c. 108, did not violate the contract clause of the Constitution of the United States.

THE case was argued with Nos. 148, 149, 150 and 151, the reports of which follow it.

Mr. W. T. Ellis for plaintiff in error. *Mr. J. A. Dean* filed a brief for same.

Mr. Chapeze Wathen and *Mr. J. D. Atchison* for defendants in error.

Mr. Justice White delivered the opinion of the court.

The plaintiff in error, the Citizens' Savings Bank of Owensboro, Kentucky, was created, by an act of the general assembly of the State of Kentucky, approved May 12, 1884, with authority to do a general banking business. The legislative charter provided that the corporation should exist for a period of thirty years from the date of the act, and in section 7 it was provided that on the first day of January in each year the bank should pay "into the state treasury, for the benefit of revenue proper, fifty cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax and bonus thereon of every kind."

At the time this charter was granted there existed on the statute books of Kentucky a law, enacted February 14, 1856, 2 Rev. Stat. Ky. 121, providing as follows:

"Sec. 1. That all charters and grants of or to corporations, or amendments thereof, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, That whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested.

* * * * *

"Sec. 3. That the provisions of this act shall only apply to charters and acts of incorporation to be granted hereafter; and that this act shall take effect from its passage."

It would seem that from the date of its creation until the year 1886 the bank was called upon to pay only the taxes provided in the seventh section of its charter. In 1886 (Session Acts of Kentucky, 1885–6, pp. 140, 144 to 147, 201) the legislature of Kentucky adopted what is designated in the

briefs of counsel as the Hewitt Act, containing the following provisions as to the taxation of banks:

"SEC. 1. That shares of stock in state and national banks, and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed 75 cents on each share thereof, equal to $100, or on each $100 of stock therein owned by individuals, corporations or societies, and said banks, institutions and corporations shall, in addition, pay upon each $100 of so much of their surplus, undivided surplus, undivided profits or undivided accumulations as exceeds an amount equal to 10 per cent of their capital stock, which shall be in full of all tax, state, county and municipal.

* * * * *

"SEC. 4. That each of said banks, institutions and corporations, by its corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the act of Congress, or under the charters of the state banks, to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the Governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such banks.

"SEC. 5. The said bank may take the proceeding authorized by section 4 of this act at any time until the meeting of the next general assembly: *Provided*, They pay the tax provided in section 1 from the passage of this act.

"SEC. 6. This act shall be subject to the provisions of section eight (8), chapter sixty-eight (68), of the general statutes.

"SEC. 7. If any bank, state or national, shall fail or refuse to pay the tax imposed by this act, or shall fail or refuse to

make the consent and agreement as prescribed in section 4, the shares of stock of such bank, institution or corporation, and its surplus, undivided accumulations and undivided profits, shall be assessed as directed by section 2 of this act, and the taxes — state, county and municipal — shall be imposed, levied and collected upon the assessed shares, surplus, undivided profits, undivided accumulations, as is imposed on the assessed taxable property in the hands of individuals: *Provided*, That nothing herein contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned and used by said banks or corporations for conducting their business, but the same may be taxed for county and municipal purposes as other real estate is taxed."

The Citizens' Savings Bank accepted the Hewitt Act in the mode provided, and thereafter paid the tax specified therein.

In 1891 Kentucky adopted a new constitution, which contained the following:

"SEC. 174. All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the general assembly from providing for taxation based on income, licenses or franchises."

The State of Kentucky, in 1892, enacted a law providing, among other things, for the assessment and taxation by the State, counties and municipalities, of banking and other corporations. This law was in absolute conflict with the Hewitt Act, and by special provision as well as by necessary legal intendment operated, if the constitution had not already done so, to repeal the system of bank taxation established by the Hewitt Act. Without detailing the scheme of taxation created by the law of 1892, it suffices to say that it organized a State board whose duty it was to ascertain and fix the value of what was termed the franchises of banks and other corporations, referred to in the law, and upon the amount so fixed the general state tax was levied. It was besides made

the duty of the board to certify its valuation of the property or franchises to the proper county or municipality in which the corporation was located, so that the sum of this assessment might become the basis upon which the local taxes should be laid. The city of Owensboro, where the Citizens' Savings Bank was located, established by ordinances the rate of municipal taxes for the years 1893 and 1894, and the sum so fixed was assessed upon the valuation of the franchises or property of the bank which had been certified by the state board in claimed conformity to the statute of 1892. The bank refused to pay these taxes, and a levy was made by the tax collector upon some of its property, and garnishment process was also issued against several of its debtors. Thereupon this suit was commenced by a petition, on behalf of the bank, to enjoin the city of Owensboro and its tax collector from enforcing the taxes in question.

The averments of the petition, and of the amendments thereto — for it was twice amended — assailed the validity of the tax on several grounds, all of which are, substantially, included in the following summary:

First. That the board of state valuation had no power under the constitution and laws of the State to make an assessment for local taxation, and, if it had such power, had not exercised it lawfully, because the method of valuation pursued by it was so arbitrary as to cause its action to be void. Second. That no notice of the assessment had been given the officials, as required by the state law. Third. That the taxes violated the equality clause of the state constitution, because, by the method adopted in making the assessment, the property of the bank had been valued by a rule which caused it to be assessed at proportionately one third more than the sum assessed against other property in the city of Owensboro, and by one half more than the valuation at which the property of other taxpayers throughout the State was assessed. Fourth. That the taxes violated the state law and constitution, because based upon an assessment made by the state board, and not on an assessment made by the city, and that they were likewise illegal, because the levy of the tax predicated

upon the assessment, by the state board, was dehors the powers of the city of Owensboro under the state laws. Fifth. That the taxes moreover violated the equality clause of the state constitution, because as there were certain national banks doing business in the city of Owensboro, against whom the franchise tax provided by the state law could not be enforced, without a violation of the law of the United States, therefore these banks could not be taxed for the franchise tax, and not to tax them, whilst taxing the petitioner, would bring about inequality of taxation, and hence be a violation of the state constitution. Sixth. The taxes were expressly and particularly attacked on the ground that the Hewitt Act, and the acceptance of the terms thereof, constituted an irrevocable contract, between the State and the bank, exempting it from all taxation other than as specified in the Hewitt Act, and therefore that the revenue act of 1892 and the levy of the taxes in question by the city of Owensboro violated the contract rights of the bank, which were protected from impairment by the Constitution of the United States.

In further support of this ground the petition charged that at the time the Hewitt Act was passed the bank had an irrevocable contract arising from section 7 of its charter limiting taxation to the sum there specified, which right the bank had surrendered in consequence of the contract embodied in the Hewitt Act. It was averred that this surrender of its contract right to enjoy the limited taxation, conferred by its charter, was a valid consideration moving between the bank and the State, operating to cause the Hewitt Act to become a contract upon adequate consideration.

A preliminary injunction restraining the collection of the taxes was allowed. The city of Owensboro demurred to the petition and to the various amendments thereof, and, reserving its demurrers, answered traversing the averments of the original petition and the amendments thereto. Motions were made to dissolve the injunction. On these motions testimony was taken and the case was heard on the motions to dissolve, and on the demurrers. The trial court dissolved the injunction, sustained the demurrers, and dismissed the suit. On appeal to

the Court of Appeals of Kentucky the decree of the trial court was affirmed. 39 S. W. Rep. 1030.

The opinion of the Kentucky Court of Appeals contained not only the reasons applicable to the case we are now considering, but also such as were by it considered relevant to several other cases which, it would seem, were either heard by that court at the same time or were deemed by the court to present so many cognate questions as to enable it to embrace the several cases in one opinion. In so far as it related to this cause, the opinion fully examined and disposed of the question of contract and the issues consequent thereon. An application on behalf of the appellant was thereafter filed, styled "Petition for extension of opinion and reversal." This application, whilst declaring that the appellant could not assent to the conclusion of the court on the question of the existence of an irrevocable contract, protected from impairment by the Constitution of the United States, asked no rehearing on that subject. The grounds for rehearing, which were elaborately pressed, related solely to certain questions of law which it was argued the record presented, and which it was claimed depended on the state law and constitution. There was no contention that these issues involved the Constitution or laws of the United States.

All the assignments of error but the eighth and ninth relate to errors charged to have been committed by the court below in holding that there was no contract protected from impairment by the Constitution of the United States. The eighth assignment asserts that there was error in allowing a penalty for the non-payment of the taxes, because such penalty was by the state law imposed only upon corporations and not on other taxpayers, and therefore the state law violated the Fourteenth Amendment to the Constitution of the United States. The ninth assignment charges that there was error in holding the taxes to be valid because the property or franchise of the bank, on which the tax was levied, was assessed at its full value, whilst other taxpayers in the State were assessed at not more than seventy per cent of the value of their property, thus creating an inequality of taxation, equivalent to a denial of

the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

We at the outset dispose of the eighth and ninth assignments just referred to. The questions which they raise are not properly here for consideration. They are not presented by the record nor do they result by necessary intendment therefrom. Indeed they were excluded from the cause, as Federal questions, by the implications resulting from the pleadings. Whilst it was charged that the penalties were unlawful, there was no allegation that their enforcement would violate any Federal right. On the contrary, the petition and the amendments to it clearly placed the objection to the penalties on the ground that their enforcement would violate the state law and the state constitution. The distinction between the state right thus asserted and the Federal right was clearly made when the only Federal issue which was relied on, the impairment of the obligation of the contract, was alleged, for then it was plainly stated to depend upon a violation of the Constitution of the United States. Even after the opinion of the Court of Appeals was announced there was not a suggestion made in the petition for rehearing that a single Federal question was considered by the parties as arising except the one which the court had fully decided, and as to which it was expressly declared a rehearing was not prayed. The assignments of error in question therefore simply attempt to inject into the record a Federal question not lawfully therein found, never called to the attention of the state court by pleading or otherwise, and not necessarily arising for consideration in reviewing the judgment of the state court to which the writ of error is directed. But after a decision by the court of last resort of a State the attempt to raise a Federal question for the first time is too late. *Miller* v. *Texas*, 153 U. S. 535; *Loeber* v. *Schroeder*, 149 U. S. 580. It is also clear that where it is disclosed that an asserted Federal question was not presented to the state court or called in any way to its attention, and where it is not necessarily involved in the decision of the state court, such question will not be considered by this court. *Louisville & Nashville Railroad* v. *Louisville*, 166 U. S. 709; *Oxley Stave Co.* v. *Butler County*,

166 U. S. 648; *Kipley* v. *Illinois*, 170 U. S. 182; *Green Bay & Mississippi Canal Co.* v. *Patten Paper Co.*, 172 U. S. 58; *Capital Bank* v. *Cadiz Bank*, 172 U. S. 425. We therefore decline to review the errors alleged in the eighth and ninth assignments, and passing their consideration are brought to the real Federal controversy which arises on the record — that is, the question of irrevocable contract.

The claim is that the Hewitt Act and its acceptance by the banks constituted an irrevocable contract, although at the time that act was passed there was a general statute of Kentucky reserving the right to repeal, alter or amend "all charters or grants of or to corporations or amendments thereof and all statutes" passed subsequent thereto, and although this general statute was expressly made a part of the Hewitt Act by the sixth section thereof. The wording of the sixth section accomplishing this result is: "This act shall be subject to the provisions of section 8, chapter 68, of the general statutes," the provision thus referred to being the general law of 1856, reserving the power to repeal, alter or amend as above. When the proposition relied upon is plainly stated and its import clearly apprehended, no reasoning is required to demonstrate its unsoundness. In effect, it is that the contract was not subject to repeal, although the contract itself in express terms declares that it should be so subject at the will of the legislative authority. The elementary rule is that if at the time a corporation is chartered and given either a commutation or exemption from taxation, there exists a general statute reserving the legislative power to repeal, alter or amend, the exemption or commutation from taxation may be revoked without impairing the obligations of the contract, because the reserved power deprives the contract of its irrevocable character and submits it to legislative control. The foundation of this rule is that a general statute reserving the power to repeal, alter or amend is by implication read into a subsequent charter and prevents it from becoming irrevocable. In a case like the one now considered, where not only was there a general statute reserving the power, but where such general law was made by unambiguous

language one of the provisions of the contract, of course the legislative power to repeal or amend is more patently obvious to the extent that that which is plainly expressed is always more evident than that which is to be deduced by a legal implication. In *Tomlinson* v. *Jessup*, 15 Wall. 454, in speaking of a contract exemption from taxation arising from a charter, and of the right to repeal the same springing from a general law, reserving the power to alter or amend, which existed at the time the charter was conferred, the court, through Mr. Justice Field, said (p. 459):

"Immunity from taxation, constituting in these cases a part of the contract with the Government, is, by the reservation of power such as is contained in the law of 1841, subject to be revoked equally with any other provision of the charter whenever the legislature may deem it expedient for the public interests that the revocation shall be made. The reservation affects the entire relation between the State and the corporation and places under legislative control all rights, privileges and immunities derived by its charter directly from the State."

In *Railroad Co.* v. *Maine*, 96 U. S. 499, 510, the question was as to the liability to taxation of a consolidated corporation which came into existence while a general statute was in force, providing that any act of incorporation subsequently passed might be amended, altered or repealed at the pleasure of the legislature, in the same manner as if an express provision to that effect were therein contained, unless there was in the act of incorporation an express limitation or provision to the contrary. The court said: "There was no limitation in the act authorizing the consolidation, which was the act of incorporation of the new company, upon the legislative power of amendment and alteration, and, of course, there was none upon the extent or mode of taxation which might be subsequently adopted. By the reservation in the law of 1831, which is to be considered as if embodied in that act, the State retained the power to alter it in all particulars constituting the grant to the new company formed under it, of corporate rights, privileges and immunities. The existence of

the corporation and its franchises and immunities, derived directly from the State, were thus kept under its control."

In *Louisville Water Company* v. *Clark*, 143 U. S. 1, 12, the corporation claimed that it had acquired under an act of the legislature of the State of Kentucky an exemption from taxation which could not be withdrawn by subsequent legislation without its consent. As the act granting the exemption was passed subsequent to the adoption by the general assembly of Kentucky of the act of 1856, (the general law which was in being when the Hewitt Act was adopted, and which was expressly made a part of alleged contract,) it was held that the exemption from taxation could be repealed without impairing the obligation of the contract. The court, through Mr. Justice Harlan, said: "In short, the immunity from taxation granted by the act of 1882 was accompanied with the condition — expressed in the act of 1856 and made part of every subsequent statute, when not otherwise expressly declared — that, by amendment or repeal of the former act, such immunity could be withdrawn. Any other interpretation of the act of 1856 would render it inoperative for the purposes for which, manifestly, it was enacted."

Again, in *Covington* v. *Kentucky*, 173 U. S. 231, 238, considering the same subject in a case which involved the application of the power reserved by the State of Kentucky, in the act of 1856, to repeal, alter or amend all grants or contracts made subsequent to that act, the court said, through Mr. Justice Harlan:

"There was in that act [that is, the one making the grant] no 'plainly expressed' intent never to amend or repeal it. It is true that the legislature said that the reservoirs, machinery, pipes, mains and appurtenances, with the land upon which they were situated, should be forever exempt from state, county and city taxes. But such a provision falls short of a plain expression by the legislature that at no time would it exercise the reserved power of amending or repealing the act under which the property was acquired. The utmost that can be said is that it may be inferred from the terms in which the exemption was declared that the legislature had no purpose

at the time the act of 1886 was passed to withdraw the exemption from taxation; not that the power reserved would never be exerted, so far as taxation was concerned, if in the judgment of the legislature the public interest required that to be done. The power expressly reserved to amend or repeal a statute should not be frittered away by any construction of subsequent statutes based upon mere inference. Before a statute — particularly one relating to taxation — should be held to be irrepealable, or not subject to amendment, an intent not to repeal or amend must be so directly and unmistakably expressed as to leave no room for doubt; otherwise, the intent is not plainly expressed. It is not so expressed when the existence of the intent arises only from inference or conjecture."

The conclusions stated in these cases are but the expression of many other adjudged causes. *Railroad Company* v. *Georgia*, 98 U. S. 359, 365; *Hoge* v. *Railroad Company*, 99 U. S. 348, 353; *Sinking Fund cases*, 99 U. S. 700, 720; *Greenwood* v. *Freight Company*, 105 U. S. 13, 21; *Close* v. *Glenwood Cemetery*, 107 U. S. 466, 476; *Louisville Gas Company* v. *Citizens' Gas Company*, 115 U. S. 683, 696; *Gibbs* v. *Consolidated Gas Company*, 130 U. S. 396, 408; *Sioux City Street Railway* v. *Sioux City*, 138 U. S. 98, 108.

Undoubtedly in the *Bank Tax cases*, 97 Kentucky, 597, the Court of Appeals of Kentucky decided that the Hewitt law created an irrevocable contract, and that the general assembly of that State could not repeal, alter or amend it without impairing the obligations of the contract, despite the existence of the act of 1856, and despite the circumstance that that act was in express terms incorporated in and made part of the Hewitt law. But the reasoning by which the court reached this conclusion is directly in conflict with the settled line of decisions of this court just referred to, and the case has been specifically overruled by the opinion announced by the Kentucky Court of Appeals in the cause now under review. It is not and cannot be asserted that the *Bank Tax cases* were decided before the contract evidenced by the Hewitt law was accepted, hence it cannot be urged that such

decision entered into the consideration of the parties in forming the contract. It is not pretended that the bank, whose rights are here contested, was either a party or privy to the *Bank Tax cases*. And even if such were the case, we must not be understood as intimating that the construction of the Hewitt Act, which was announced in the *Bank Tax cases*, would be binding in controversies as to other taxes between those who were parties or privies to those cases. On this subject we expressly abstain from now intimating an opinion. In determining whether, in any given case, a contract exists, protected from impairment by the Constitution of the United States, this court forms an independent judgment. As we conclude that the decision in the *Bank Tax cases* above cited, upon the question of contract, was not only in conflict with the settled adjudications of this court, but also inconsistent with sound principle, we will not adopt its conclusions.

It was earnestly argued that conceding the general rule to be that a reserved power to repeal, alter or amend enters into and forms a part of all subsequent legislative enactments, nevertheless this case should not be controlled thereby, first, because of peculiar conditions which it is asserted existed at the time the Hewitt law was enacted, and, second, because of the terms of the act of 1856 by which the power to repeal, alter or amend was reserved. The conditions relied upon and stated in argument as removing this case from the operation of the general principle are as follows: When the Hewitt law was enacted there existed much uncertainty as to the power of the State of Kentucky to tax banks within its borders. There were banks claiming to be only subject to limited taxation because of charters enacted prior to the act of 1856. Again, there were other banks asserting a like right because of charters adopted since 1856, but which, it was said, were not dominated by that act. In consequence of these pretensions on behalf of state banks which were then undetermined, the national banks, organized in the State, were insisting that they were subject only to the rate of taxation to which the most favored state bank was liable, because it was urged that to tax such banks at a higher rate

would be a discrimination in favor of these banks and against the national banks, which was forbidden by the law of the United States. To add to this complexity, it is said, the varying rate of local taxation was operating inequality among banks, and driving banking capital from the localities where the tax was highest, thus producing a public detriment. To assuage these difficulties and conflicts, to secure as to all banks, state and national, a uniform and higher rate of state taxation than that existing as to other property, it is asserted that the Hewitt law tendered to all banks a contract giving freedom from local burdens if a higher state tax was voluntarily paid. This must have been contemplated to be irrevocable, for otherwise the very object of the law could not have been accomplished. Conceding *arguendo* to the fullest degree the situation to have been as described, the conclusion sought to be deduced from it is wholly unsound, since it disregards the fact that the contract proposed and which was actually entered into contained an express reservation of the right to repeal, alter or amend. Indeed, the contention, when analyzed, amounts to this, that the plain letter of the contract should be disregarded upon the theory that the parties intended to make a different contract from that which they actually entered into. The distinction between the potentiality of a particular state of facts, for the purpose of preventing the implication of the reserved power to alter, amend or repeal, and the impotency of such facts to overcome the express and unambiguous provisions of the contract, at once demonstrate the confusion of thought involved in the contention. It was upon the distinction existing between the implication of the power to amend, alter or repeal, and its express statement in a contract, that the case of *New Jersey* v. *Yard*, 95 U. S. 104, proceeded, and that case is therefore wholly inapposite to the controversy here presented.

The argument predicated on what is said to be the peculiar language of the act of 1856 is this: That act, whilst reserving the right to amend or repeal "all charters and grants of or to corporations, or amendments thereof, and all other statutes," accompanied this reserved right with the restriction that it

should not be exercised where "a contrary intent be therein plainly expressed, (in the act creating the right,) provided, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested." The bank, it is asserted, had under its charter a right to be taxed only to a limited amount; and this, it is claimed, constituted a contract which was surrendered on the theory that the Hewitt law was irrevocable, and if it were not so, then there was no surrender of the right under the charter, and therefore it now exists. This contention, however, but states in another form the claims which we have already disposed of. The charter was conferred on the bank subsequent to the act of 1856, and the limit of taxation stated in the charter was therefore subordinated to that act and subject to the exercise of the power of amendment or repeal. True it is, in *Franklin County Court* v. *Deposit Bank of Frankfort* (June, 1888), 87 Kentucky, 370, 382, the Court of Appeals of Kentucky decided that a grant, after the act of 1856, of an exemption from taxation for a designated time, signified such a plain manifestation of the will of the legislature that the grant should not be subject to alteration or amendment, that the right so conferred was therefore not submitted to the paramount power of repeal or amendment reserved by the act of 1856. This decision, however, was rendered long after the enactment of the charter of the bank, whose rights are now before us, and has been expressly overruled, by the Court of Appeals, in the case which we are reviewing. The doctrine settled by the adjudications of this court is this: That the mere grant for a designated time of an immunity from taxation does not take it out of the rule subjecting such grant to the general law retaining the power to amend or repeal, unless the granting act contain an express provision to that effect. The doctrine on which the argument depends is that any grant for a designated time is by implication taken out of the general rule, even although there be no express provision to that end in the act making the grant.

The assertion that wherever it is stated in a legislative grant

or charter that it is to last for a given period of time, therefore such provision is a plain manifestation of the intention of the legislature that the grant or charter shall not be repealed or amended for the time for which it was declared that it should exist, is fallacious, since it overlooks the consideration that the limit of time fixed for the duration of the charter or grant, like every other provision therein, is qualified by the reserved power to alter, amend or repeal. It hence results that where in a charter or grant enacted, when there is a general statute reserving the power to repeal, alter or amend, a time is stated, the granting act must be read just as if it declared that the charter or grant should exist for a designated time, unless sooner repealed, altered or amended. Indeed, reduced to its final analysis, the argument that because in a grant or charter a time is designated for its duration, it cannot, therefore, until the expiration of such time, be repealed, altered or amended, is equivalent to saying that the reserved power cannot be exercised in any case of contract. For, if every case of charter or grant where a time is fixed, either expressly or by necessary construction in the charter or grant, is taken out of the reach of the reserved power, it would follow that only those charters or grants which were determinable at will would come under the control of the power reserved. But to say this simply amounts to declaring that the reserved power applies and can be enforced only in those cases where it would be entirely unnecessary or useless to do so.

The source of the reservation, by many of the States in general laws, of the power to amend, alter or repeal, was fully reviewed in *Greenwood* v. *Freight Company*, 105 U. S. 13, where it was shown that such legislation had its origin in the purpose to provide for a case exactly like the one before us. Referring to the decision in *Dartmouth College* v. *Woodward*, 4 Wheat. 518, the court, through Mr. Justice Miller, said (p. 20): "It was, no doubt, with a view to suggest a method by which the state legislatures could retain in a large measure this important power," (the power to repeal or amend,) "without violating the Federal Constitution, that Mr. Justice Story, in his concurring opinion in the *Dartmouth College*

case, suggested that when the legislature was enacting a charter for a corporation, a provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, and the subsequent exercise of the right would be in accordance with the contract, and could not, therefore, impair its obligation. And he cites with approval the observations we have already quoted from the case of *Wales* v. *Stetson*, 2 Mass. 143. It would seem that the States were not slow to avail themselves of this suggestion. . . ." As then the limitation in the charter of the bank was subject to repeal by the legislature, it cannot be claimed that such exemption was vested in the bank, and was therefore subject to be reinstated if the Hewitt Act was not an irrevocable contract, even if the correctness of the claim that this result would legally arise, if the charter had been an irrevocable contract, be *arguendo* conceded.

It is urged that as the act of 1856 provides that other rights previously vested could not be taken away by the repealing act, therefore the exemption from taxation could not be withdrawn; but this is a mere form of restating the arguments already examined, and is tantamount to the reassertion of the proposition that the limited taxation established by the Hewitt Act, or the one conferred by the charter, could not be taken away at all. Referring to this subject, this court in *Greenwood* v. *Freight Company*, (*ubi supra*,) said (p. 17): "Such an act may be amended; that is, it may be changed by additions to its terms or by qualifications of the same. It may be altered by the same power, and it may be repealed. What is it that may be repealed? It is the act of incorporation. It is this organic law on which the corporate existence of the company depends which may be repealed, so that it shall cease to be a law; or the legislature may adopt the milder course of amending the law in matters which need amendment, or altering it when it needs substantial change. All this may be done at the pleasure of the legislature. That body need give no reason for its action in the matter. The validity of such action does not depend on the necessity for it or on the soundness of the reasons which prompted it." In

considering what constituted vested rights, the court clearly pointed out that rights of this character did not embrace mere privileges or franchises conferred by the granting act, and such rights obviously came within the power to repeal and amend, and were not within the category of those taken out of the reach of such power.

In the *Greenwood case* the reserved power was, by the general statute, authorized to be exercised "at the pleasure of the legislature." But this qualification was decided in *Hamilton Gas Light Company* v. *Hamilton City*, 146 U. S. 258, 271, to be no more comprehensive than the power which would be implied from a general law simply reserving the right to repeal, alter or amend.

Nor is there force in the claim that before the adoption of the charter in question the courts of the State of Kentucky had settled the law to be that vested rights would include a mere privilege conferred by the granting act, and which was therefore necessarily subjected to the power to repeal or amend if such power is to have any application at all. This claim is based on what is assumed to have been decided in Kentucky in *Commissioners of the Sinking Fund* v. *Green & Barren River Navigation Company*, 79 Kentucky, 73, 75, 83. The case has not the import attributed to it. The scope of the question, in that case adjudged, was considered and commented on by this court in *Louisville Water Company* v. *Clark*, 143 U. S. 1, 16, where it was said:

"But there is nothing in that case inconsistent with the views we have expressed. It was there decided that the legislature could not consistently with the constitution, or with the above statute of 1856, take from the Green and Barren River Navigation Company, without making compensation therefor, the right it acquired under a contract with the State, concluded in 1868, to take, for a term of years, tolls from vessels navigating Green and Barren rivers, in consideration of its agreement, which had been fully performed, to maintain and keep in repair, at its own expense, such line of navigation. The case before us presents no such features. As already indicated, in losing an exemption from taxation the water com-

pany regained its rights to make such charges for water, furnished for fire protection, as it could rightfully have done before the act of 1882 was passed, and whilst its property was subject to taxation."

Finally, it is said that as at the time the Hewitt Act was passed the rate of state taxation was lower than the sum of taxation fixed by that act on the banks giving their assent to it, therefore this increased sum over and above the amount of state taxes paid by other taxpayers, to the State, constituted a consideration received by the State, and created a vested right of such a nature that the State could not repeal the Hewitt Act without providing for the refunding of the sum paid the State in excess of the state taxes paid by other taxpayers. But this disregards the patent fact that whilst the amount of the state taxes, paid by the bank under the Hewitt Act, was larger than the taxes paid by other taxpayers to the State, the bank was by the Hewitt Act relieved from all obligation to pay county and municipal taxes. As the bank had at the time of the Hewitt Act no contract limiting the taxing power of the State which could not have been repealed, it therefore could have been subjected by the State to the same rate of county and municipal taxes resting upon other taxpayers. It is not asserted that if this legislative power had been exerted and the bank been compelled to pay the same amount of taxation, for all governmental purposes, that other property owners were obliged to pay that it would not have contributed more than it was called upon to do under the Hewitt Act. The claim therefore amounts to this: That because the Hewitt Act relieved the bank from a part of the burden of taxation which rested upon the other taxpayers of the State, and this relief from burden was purely the result of the voluntary act of the lawmaker, that the power to remove the privilege cannot be exerted without refunding to the bank a portion of the lesser burden which it has paid. Thus to analyze the proposition is to answer it.

Our conclusion being that there was no irrevocable contract protecting the bank from taxation, and therefore that the taxing law of Kentucky did not violate the contract clause of

the Constitution of the United States, it follows that the decree below must be and it is

Affirmed.

MR. JUSTICE BROWN dissenting.

The cogency with which the opinion of the court is expressed is calculated to awaken a distrust as to the soundness of any conflicting views; but the very fact that the court to which this writ of error was issued, only two years before the decree was pronounced which this court has affirmed, came to a precisely opposite conclusion upon the same state of facts, indicates at least that the question is not free from a reasonable doubt. Indeed the judiciary of Kentucky appears to be about equally divided upon the subject.

The dominant question in the case is whether the written acceptance by the bank of the proposition contained in the act of 1886, known as the Hewitt Act, constituted a contract which neither the legislature nor the bank could repudiate at pleasure. As stated in the opinion of the court, the bank was chartered in 1884, with a provision that its life should continue for thirty years, and that a payment of fifty cents on each one hundred dollars of stock should "be in full of all tax and bonus thereon of every kind." This charter fell under the provisions of the prior act of 1856, declaring that all such charters should be subject to amendment or repeal at the will of the legislature. There seems, however, to have been some dispute as to whether, under the power to amend, it was within the competency of the legislature to increase this tax during the life of the charter, without a violation of the Fourteenth Amendment to the Federal Constitution. To settle this question beyond peradventure, the legislature, in 1886, inaugurated a new policy, and in the Hewitt Act made a distinct proposition that, if the banks and corporations interested, with the consent of the majority in interest of their stockholders, at a regular meeting thereof, should give their consent to the levying of a tax of seventy-five cents on each share equal to one hundred dollars, and agree to pay the same as therein provided, and would agree to waive and release all

right under the act of Congress, or under their charters, to a different mode or smaller rate of taxation, and should evidence such consent by writing under the seal of the bank delivered to the Governor of the Commonwealth, "such bank and its shares of stock should be exempt from all other taxation whatever, so long as said tax shall be paid during the corporate existence of such bank." There was a further provision that, in case of refusal to enter into this compact, the bank should be assessed as directed by a previous section, and such state, county and municipal taxes imposed as were imposed on the assessed taxable property in the hands of individuals.

It is true that this act was made expressly subject to the prior act of 1856, declaring that all charters and grants to corporations should be subject to amendment or repeal at the will of the legislature; but this very act limited the power to repeal and amend to cases where a "contrary intent" was not "therein plainly expressed." In other words, that while such charters or grants were generally subject to amendment or repeal, if language were used by the legislature indicating clearly an intention that the privileges and franchises therein granted should not be subject to amendment or repeal, it was perfectly competent to do so, and the stipulation was binding. There was a further provision that no amendment or repeal should "impair other rights previously vested." How then could such intent to limit its own powers be manifested by the legislature? It will probably be conceded that, if the grant or charter contained a clause to the effect than any particular privilege therein granted should not be subject to amendment or repeal, it would be sufficient; but it seems to me equally clear that if it contained other language plainly evincing an intent that a particular clause should be irrepealable for a certain length of time; or, if it contained a proposition from which the legislature could not withdraw without a breach of faith toward those who had accepted its terms, it could not be intended that such contract, if accepted, should be subject to repudiation. Conceding to its fullest extent the doctrine of the *Dartmouth College case*, that the charter of

a corporation is a contract, it follows that so far as it is a charter it is, under the act of 1856, subject to amendment or repeal; but so far as the legislature departs from the main object of the charter of granting privileges and franchises, and invites its corporations to enter into written contracts with it, requires such contracts to be executed in an unusual form, and to receive the consent, not only of the directors but of a majority of its stockholders, and, further, that they be made under seal and delivered to the Governor of the Commonwealth, that then it evinces an intent as clearly as language can express it that such contract shall be binding, and that, in respect thereto, it yields up its right to amendment or repeal. *New Jersey* v. *Yard*, 95 U. S. 104. To hold that a contract thus solemnly entered into may be repudiated at the next session of the legislature is practically to say that the legislature may set a trap for its corporations, and that after it has enticed them into it by the offer of more favorable terms than they otherwise could obtain, may repudiate its own obligations, without restoring to the corporations what it had previously induced them to give up.

The difficulty with the position of the court is, that it renders it impossible for the Commonwealth to enter into a contract with one of its own corporations, which it may not repudiate at the next session of its legislature. If capital may be enticed into the State under its solemn promise that certain privileges shall be granted, or that it shall be subject to a certain specified rate of taxation, which may be withdrawn at any moment, it can scarcely complain if foreign capital refuses to be tempted by such illusory offers. I see no reason why, under the decision of the court, if the legislature should enter into a compact with one of its own corporations to perform a great public work, it may not, after capital has been largely invested therein, and the work entered upon, under the guise of amending the grant, abrogate its contract and leave the corporation practically defenceless. Indeed it seems to me that it is not creditable to the legislature to impute to it an intent to subject corporations, which had accepted the benefits of the Hewitt Act, to the rate of taxation prescribed by the act of 1892,

providing for wholly different modes of assessment and taxation, and that it is more reasonable to assume that the taxing officers of the city of Owensboro exceeded their authority in attempting to exact the taxes in question.

The cases cited in the opinion of the court are not in conflict with the position here assumed. In *Tomlinson* v. *Jessup*, 15 Wall. 454, it was decided that an act of the legislature of South Carolina, passed in 1851, incorporating the Northeastern Railroad Company, and a subsequent act passed in 1855, providing that its stock should be exempt from taxation during the continuance of the charter, were subservient to a general act passed in 1841, reserving the right to amend, alter or repeal every such charter, unless the act granting such charter should in express terms except it. As the amended charter in question contained no clause excepting it from the provisions of the general act of 1841, it was held that its property might be taxed by subsequent legislation. The case differs from the one under consideration in the fact that the amended charter contained no exception taking it out of the act of 1841, and that there was no express contract in that charter that no tax should be subsequently imposed. There was nothing to indicate that this charter was not intended to fall within the restrictions of the act of 1841.

In *Railroad Company* v. *Maine*, 96 U. S. 499, there was a similar general law, passed in 1831, declaring any act of incorporation liable to be amended, altered or repealed at the pleasure of the legislature, unless there was "an express limitation or provision to the contrary." It was held that an act of the legislature passed in 1856, authorizing corporations to consolidate and form a new corporation, was an act of incorporation of a new company, and, there being in this act no limitation upon the power of amendment, alteration and repeal, the State retained the power to alter it in all particulars, constituting the grant of corporate rights, privileges and immunities to the new company, and that a limitation upon the taxing power of the State prescribed in the charters of the old companies ceased upon their consolidation, though it was said that "rights and interests acquired by the company, not constituting a part of

the contract of incorporation, stand upon a different footing." In its application to this case it is subject to the same criticism as that of *Tomlinson* v. *Jessup*.

The case of the *Louisville Water Company* v. *Clark*, 143 U. S. 1, arose under the same act of Kentucky of 1856. In that case, an immunity from taxation, conferred upon the water company by an act passed in 1882, was withdrawn by a subsequent act passed in 1886, and it was held that as the act of 1882 contained no clause that "plainly expressed" an intention not to exercise the power reserved by the statute of 1856 to amend or repeal, at the will of the legislature, all charters or grants to corporations, the act was subject to that general statute for the very reason that there was no "contrary intent" "plainly expressed." The opinion harmonizes completely with the position here assumed, and contains a clear inference that where a subsequent act plainly evinces an intention on the part of the legislature that the general statute of 1856 should not apply, such intention will be respected and will control the operation of the general statute. If the Hewitt Act does not evince such intention, of course the whole argument falls to the ground; but it seems to me that its language in this particular is too clear to be disregarded.

The recent case of *Covington* v. *Kentucky*, 173 U. S. 231, is of the same tenor. An act passed in 1886, authorizing the city of Covington to build a system of water works, contained a provision that they should "remain forever exempt from state, county and city tax." This was held to be subject to the act of 1856, providing for the amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed. It was very properly held that there was nothing in the act of 1886 plainly expressing an intent that the provision exempting the property from taxation was not subject to repeal; but the whole theory of this dissent is embodied in the proposition that there was in the Hewitt Act a plainly expressed intent that it should not be amended or repealed to the prejudice of banks accepting its terms. There was a plain intimation in that opinion that if the act of 1886 had contained evidence of such intent it would have been held to repeal the

act of 1856 to that extent. "Before a statute," said the court, — "particularly one relating to taxation, — should be held to be irrepealable, or not subject to amendment, an intent not to repeal or amend must be so directly and unmistakably expressed as to leave no room for doubt; otherwise the intent is not plainly expressed. It is not so expressed when the existence of the intent arises only from inference or conjecture."

Such intent *was* found by this court in *New Jersey* v. *Yard*, 95 U. S. 104, in the fact that there was in the supplemental charter of the corporation, precisely as in the Hewitt Act, (1) a subject of dispute and fair adjustment of it for a valuable consideration on both sides; (2) the contract assumed, by legislative requirement, the shape of a formal written contract; (3) the terms of the contract, that "this tax shall be in lieu and satisfaction of all other taxation or imposition whatsoever by or under the authority of this State or any law thereof," excluded in view of the whole transaction, the right of the State to revoke it at pleasure. There was the same provision as in the Hewitt Act, that the section providing for a commutation of taxes should not go into effect, or be binding upon the company, until it had signified its assent under its corporate seal and filed it in the office of the secretary of State. The language of Mr. Justice Miller is so pertinent that I cannot forbear quoting the following paragraph: "Can it be believed that it was intended by either party to this contract that, after it was signed by both parties, one was bound forever, and the other only for a day? That it was intended to be a part of the contract that the State of New Jersey was, at her option, to be bound or not? That there was implied in it, when it was offered to the acceptance of the company, the right on the part of the legislature to alter or amend it at pleasure? If the State intended to reserve this right, what necessity for asking the company to accept in such formal manner the terms of a contract which the State could at any time make to suit itself?" I find it difficult to see how that case and the one under consideration can stand together.

So far as the Court of Appeals of Kentucky had spoken

upon this question, prior to the decision which is here affirmed, it was uniformly in favor of the position taken in this dissent. In *Franklin County Court* v. *Deposit Bank of Frankfort*, 87 Kentucky, 370, it was held that an act which continued the life of a charter to a period beyond the time fixed for its expiration, and reserved the corporate organization, privileges, powers, duties and rights, was an extension of an old charter, and not the grant of a new one; that an act passed in 1858, "plainly expressed" an intention that the act of 1856 should not apply to it, and that such intent was evinced by the provision that the appellee bank should establish a branch at Columbus; "that the amount of its circulation should not be greater than the amount of its capital stock actually paid in; that it should, in addition to the fifty cents per share of its capital stock, pay annually fifty cents upon each one hundred dollars of its contingent fund; that it should be subject to all the limitations, conditions and duties imposed upon it by the act of incorporation; that it should formally accept the terms of extension."

I desire only to add that in *Commonwealth* v. *Farmers' Bank of Kentucky*, 97 Kentucky, 590, it was held, by the same majority of the court which subsequently overruled it, that there existed in the Hewitt Act "every element of a contract between the State and the banks and, with such a consideration as will uphold it, no reasonable doubt can be entertained that such was the purpose of the parties to it." "We are satisfied," said the court, "after a careful consideration of this question, that the parties making the contract never contemplated or intended that the act of 1856 should apply to this contract after its acceptance by the banks, and that such an acceptance was necessary to make the contract complete between the parties." The argument is a powerful demonstration of the existence of an irrevocable contract; but the Court of Appeals subsequently overruled this decision, and this court has affirmed its action, and in addition thereto has pronounced an opinion seemingly so inconsistent with *New Jersey* v. *Yard*, as to practically amount to an overruling of that case. These cases, however, are but a reaffirmance of a

principle which the same court had previously laid down in *Commissioners of Sinking Fund* v. *Green & Barren River Navigation Co.*, 79 Kentucky, 73, and *Commonwealth* v. *Owensboro &c. Railroad*, 95 Kentucky, 60, that a distinct contract contained in a charter was not subject to the act of 1856. Indeed, I do not understand upon what other theory a positive acceptance of the taxation imposed by the Hewitt Act was required of these banks.